



January 23, 2004

HOUSE BILL No. 1309

DIGEST OF HB 1309 (Updated January 21, 2004 4:44 pm - DI 96)

Citations Affected: IC 22-3; IC 27-4; IC 33-13; noncode.

Synopsis: Worker's compensation. Requires members of the worker's compensation board (board) to be attorneys admitted to the bar for at least five years and sets board member compensation equal to that of full-time superior court judges. Increases the term of board members from four to 12 years. Establishes a performance evaluation committee to review the performance of board members. Authorizes the board to appoint board ombudsmen to determine issues arising under worker's compensation, with certain exceptions. Requires ombudsmen to report their findings in an evidentiary hearing to the board and requires a board member to enter the final order or award. Establishes a process for transferring or redirecting an employee's medical treatment to another physician. Provides for a uniform two year statute of limitations for worker's compensation and occupational disease claims. Establishes a penalty for failure to timely pay temporary total disability compensation or a final judgment. Requires the appointment of an independent medical examiner when an employee's temporary total disability or permanent partial impairment rating is not determined by the attending physician. Increases worker's compensation and occupational disease benefits. Increases the minimum average weekly wage. Revises the funding mechanism for the second injury fund (fund). Extends fund coverage to occupational diseases. Authorizes a 10% prejudgment interest rate for disputed worker's compensation and occupational disease claims. Establishes disabled from trade compensation. Establishes a fine for failure to pay assessments into the second injury fund. Requires the board to refer an insurance carrier that does not pay the assessments to the department of insurance for administrative action for committing an unfair or deceptive act and practice. Authorizes an assessment based on written premium and self-insured employers to fund the administrative expenses of the board.

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Effective: July 1, 2004.

Liggett

January 15, 2004, read first time and referred to Committee on Labor and Employment.
January 22, 2004, amended, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.

HB 1309—LS 7235/DI 102+



January 23, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1309

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-3-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) There is hereby created the
3 worker's compensation board of Indiana, which shall consist of seven
4 (7) members, not more than four (4) of whom shall belong to the same
5 political party, appointed by the governor, one (1) of whom ~~he the~~
6 **governor** shall designate as ~~chairman~~ **chair. To be appointed as a**
7 **member of the board after June 30, 2004, including the chairman of**
8 **said board chair, a person** shall be an attorney of recognized
9 qualifications **admitted to the bar of Indiana for at least five (5)**
10 **years.**
11 (b) Each member of said board **appointed before July 1, 2004,**
12 **shall hold office for four (4) years and until his the member's**
13 **successor is appointed and qualified. A member of the board**
14 **appointed after June, 30, 2004, shall hold office for twelve (12)**
15 **years and until the member's successor is appointed and qualified.**
16 (c) Each member of the board shall devote ~~his the member's~~ entire
17 time to the discharge of the duties of ~~his the member's~~ office and shall

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not hold any other position of trust or profit or engage in any occupation or business. ~~interfering with or inconsistent with the discharge of his duties as such member.~~

(d) Any member of said board may be removed by the governor at any time for incompetency, neglect of duty, misconduct in office, or other good cause to be stated in writing in the order of removal. **The performance of a board member appointed after June 30, 2004, is subject to review at least every four (4) years by the performance evaluation committee established by section 4 of this chapter.** In case of a vacancy in the membership of the said board, the governor shall appoint for the unexpired term.

(e) **A board member appointed after June 30, 2004, is entitled to:**

(1) a salary equal to the salary of a full-time superior court judge; and

(2) the nonsalary benefits provided to judges under IC 33-13.

(f) Subject to subsection (l), the budget agency, with the approval of the governor, shall approve the salaries of the members of the board and the secretary.

~~(f)~~ **(g)** The board may appoint a secretary and may remove such secretary. The secretary shall have authority to administer oaths and issue subpoenas in connection with the administration of IC 22-3-2 through IC 22-3-7.

(h) The board may appoint board ombudsmen and may remove the board ombudsmen.

~~(g)~~ **(i)** The board, subject to the approval of the governor, may employ and fix the compensations of such clerical and other assistants as it may deem necessary.

~~(h)~~ **(j)** The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be approved by the chairman of the board before payment is made.

~~(i)~~ **(k) Except as provided by subsection (l),** all salaries and expenses of the board shall be audited and paid out of the state treasury in the manner prescribed for similar expenses in other departments or branches of the state service.

(l) The salaries of board members and the board ombudsmen appointed under subsection (h) must be paid out of the worker's compensation supplemental administrative fund established by IC 22-3-5-6 and audited in the manner prescribed for similar expenses in other departments or branches of the state service.

SECTION 2. IC 22-3-1-3 IS AMENDED TO READ AS FOLLOWS



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[EFFECTIVE JULY 1, 2004]: Sec. 3. (a) The worker's compensation board may adopt rules under IC 4-22-2 to carry into effect the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

(b) The worker's compensation board is authorized:

- (1) to hear, determine, and review all claims for compensation under IC 22-3-2 through IC 22-3-7;
- (2) to require medical service for injured employees;
- (3) to approve claims for medical service or attorney's fees and the charges for nurses and hospitals;
- (4) to approve agreements;
- (5) to modify or change awards;
- (6) to make conclusions of facts and rulings of law;
- (7) to certify questions of law to the court of appeals;
- (8) to approve deductions in compensation made by employers for amounts paid in excess of the amount required by law;
- (9) to approve agreements between an employer and an employee or the employee's dependents for the cash payment of compensation in a lump sum, or, in the case of a person under eighteen (18) years of age, to order cash payments;
- (10) to establish and maintain a list of independent medical examiners and to order physical examinations;
- (11) to subpoena witnesses **and order the production and examination of books, papers, and records;**
- (12) to administer oaths;
- (13) to apply to the circuit or superior court to enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records;
- (14) to create and undertake a program designed to educate and provide assistance to employees and employers regarding the rights and remedies provided by IC 22-3-2 through IC 22-3-7, and to provide for informal resolution of disputes;
- (15) to assess and collect, on the board's own initiative or on the motion of a party, the penalties provided for in IC 22-3-2 through IC 22-3-7; ~~and~~
- (16) **to appoint board ombudsmen to determine issues arising under IC 22-3-2 through IC 22-3-7, subject to the limitations set forth in section 3.1(b) of this chapter; and**
- (17) to exercise all other powers and duties conferred upon the board by law.

SECTION 3. IC 22-3-1-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2004]: Sec. 3.1. (a) A board ombudsman appointed by the worker's compensation board may do the following:

- (1) Administer an oath or affirmation that is required by law.
- (2) Order that a subpoena be issued in a matter pending before the board.
- (3) Verify a certificate for the authentication of records of a proceeding conducted by the board ombudsman.

(b) A board ombudsman appointed by the worker's compensation board may do the following:

- (1) Conduct a prehearing conference or an evidentiary hearing.
- (2) Determine issues arising under IC 22-3-2 through IC 22-3-7 with the following exceptions:
 - (A) Claims regarding the compensability of an injury or a disease arising out of and in the course of employment under IC 22-3-2-2(a) or IC 22-3-7-2(a).
 - (B) A determination as to whether one (1) of the special defenses contained in IC 22-3-2-8 or IC 22-3-7-21(b) operates as a bar to the employee's claim.
 - (C) A determination as to whether the employee is permanently and totally disabled for purposes of IC 22-3-3-10, IC 22-3-3-13, or IC 22-3-7-16.
 - (D) The approval of settlement agreements under IC 22-3-2-15.
 - (E) Issues involving a lack of diligence, bad faith, or an independent tort under IC 22-3-4-12.1.

SECTION 4. IC 22-3-1-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. A board ombudsman shall report the board ombudsman's findings in an evidentiary hearing to the board. A board member shall enter the final order or award. The final order or award is subject to full board review under IC 22-3-4-7.

SECTION 5. IC 22-3-1-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The worker's compensation board performance evaluation committee is established.

(b) The committee consists of five (5) members appointed by the governor as follows:

- (1) One (1) member who represents organized labor.
- (2) One (1) member who represents businesses covered by IC 22-3-2 through IC 22-3-7.
- (3) One (1) member who represents insurers who issue

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insurance policies under IC 22-3-2 through IC 22-3-7.

(4) One (1) member who primarily represents employees before the board.

(5) One (1) member who primarily represents employers before the board.

(c) The members of the committee must be Indiana residents.

(d) A member of the committee serves a four (4) year term and until the member's successor is appointed and qualified. A committee member may be reappointed.

(e) The governor may remove a committee member at any time for incompetency, neglect of duty, or unprofessional conduct.

(f) Each committee member is entitled to:

(1) the minimum salary per diem provided by IC 4-10-11-2.1(b); and

(2) reimbursement of travel expenses and other expenses actually incurred in connection with the member's duties; as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency. The amounts described in this subsection must be paid out of the worker's compensation supplemental administrative fund established by IC 22-3-5-6.

(g) Three (3) members of the committee constitute a quorum. At least three (3) votes are necessary for the committee to take official action.

(h) Each year the committee shall elect a chair who presides at all meetings at which the chair is present. If the chair is absent from a committee meeting at which a quorum is present, the members who are present may elect a presiding officer who serves until the conclusion of the meeting or the arrival of the chair.

(i) The committee shall:

(1) establish a procedure and guidelines for the review of board members' performance as required by section (1)(d) of this chapter; and

(2) annually provide to the governor a report concerning the reviews conducted.

SECTION 6. IC 22-3-3-4, AS AMENDED BY P.L.31-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) After an injury and prior to an adjudication of permanent impairment, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of ~~his~~ the employee's injuries, and in addition thereto such surgical, hospital, and nursing services and supplies as the

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attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer shall also pay the reasonable expense of travel, food, and lodging necessary during the travel, but not to exceed the amount paid at the time of the travel by the state to its employees under the state travel policies and procedures established by the **Indiana** department of administration and approved by the ~~state~~ budget agency. If the treatment or travel to or from the place of treatment causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage.

(b) During the period of temporary total disability resulting from the injury, the employer shall furnish the physician services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by the physician and services and supplies be furnished by or on behalf of the employer as the worker's compensation board may deem reasonably necessary.

(c) **After the employee's medical treatment with an attending physician described in subsection (a) begins, neither the employer nor the employer's insurance carrier has the right to transfer or otherwise redirect an employee's medical treatment to another physician unless:**

(1) the employee signs a written informed consent to the transfer or redirection that acknowledges the employee's right to refuse the transfer or redirection;

(2) the employee requests the transfer or redirection;

(3) the attending physician requests that:

(A) the attending physician's treatment of the employee be discontinued; or

(B) the treatment be transferred or redirected to a physician practicing a different specialty; or

(4) the worker's compensation board determines that there is good cause for the transfer or redirection.

(d) If the employer or the employer's insurance carrier desires to transfer or redirect the employee's medical treatment under subsection (c)(4) for good cause, the employer or the employer's insurance carrier shall file a transfer request with the worker's compensation board on forms prescribed by the board. A transfer may not occur until the worker's compensation board issues an order granting the transfer request.

(e) After an employee's injury has been adjudicated by agreement

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or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27 of this chapter, the employer may continue to furnish a physician or surgeon and other medical services and supplies, and the worker's compensation board may within the statutory period for review as provided in section 27 of this chapter, on a proper application of either party, require that treatment by that physician and other medical services and supplies be furnished by and on behalf of the employer as the worker's compensation board may deem necessary to limit or reduce the amount and extent of the employee's impairment. The refusal of the employee to accept such services and supplies, when provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of the refusal, and ~~his~~ **the employee's** right to prosecute any proceeding under IC 22-3-2 through IC 22-3-6 shall be suspended and abated until the employee's refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part ~~or portion~~ of the impairment, disfigurement, or death which is the result of the failure of the employee to accept the treatment, services, and supplies required under this section. However, an employer may at any time permit an employee to have treatment for ~~his~~ **the employee's** injuries by spiritual means or prayer ~~in lieu~~ **instead** of the physician or surgeon and other medical services and supplies required under this section.

~~(d)~~ **(f)** If, because of an emergency, or because of the employer's failure to provide an attending physician or surgical, hospital, or nursing services and supplies, or treatment by spiritual means or prayer, as required by this section, or because of any other good reason, a physician other than that provided by the employer treats the injured employee during the period of the employee's temporary total disability, or necessary and proper surgical, hospital, or nursing services and supplies are procured within the period, the reasonable cost of those services and supplies shall, subject to the approval of the worker's compensation board, be paid by the employer.

~~(e)~~ **(g)** Regardless of when it occurs, where a compensable injury results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, the employer shall furnish an appropriate artificial member, braces, and prosthodontics. The cost of repairs to or replacements for the artificial members, braces, or prosthodontics that

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1 result from a compensable injury pursuant to a prior award and are
 2 required due to either medical necessity or normal wear and tear,
 3 determined according to the employee's individual use, but not abuse,
 4 of the artificial member, braces, or prosthodontics, shall be paid from
 5 the second injury fund upon order or award of the worker's
 6 compensation board. The employee is not required to meet any other
 7 requirement for admission to the second injury fund.

8 ~~(f)~~ **(h)** If an accident arising out of and in the course of employment
 9 after June 30, 1997, results in the loss of or damage to an artificial
 10 member, a brace, an implant, eyeglasses, prosthodontics, or other
 11 medically prescribed device, the employer shall repair the artificial
 12 member, brace, implant, eyeglasses, prosthodontics, or other medically
 13 prescribed device or furnish an identical or a reasonably equivalent
 14 replacement.

15 ~~(g)~~ **(i)** This section may not be construed to prohibit an agreement
 16 between an employer and the employer's employees that has the
 17 approval of the board and that binds the parties to:

18 (1) medical care furnished by health care providers selected by
 19 agreement before or after injury; or

20 (2) the findings of a health care provider who was chosen by
 21 agreement.

22 SECTION 7. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Compensation shall be
 24 allowed on account of injuries producing only temporary total disability
 25 to work or temporary partial disability to work beginning with:

26 (1) the eighth ~~(8th)~~ day of ~~such~~ the disability, **for injuries**
 27 **occurring before July 1, 2004; and**

28 (2) **the third day of the disability, for injuries occurring after**
 29 **June 30, 2004;**

30 except for medical benefits provided in section 4 of the chapter. **For**
 31 **injuries occurring before July 1, 2004,** compensation shall be
 32 allowed for the first seven (7) calendar days only if the disability
 33 continues for longer than twenty-one (21) days. **For injuries occurring**
 34 **after June 30, 2004, compensation is allowed for the first three (3)**
 35 **calendar days only if the disability continues for at least fourteen**
 36 **(14) days.**

37 (b) The first weekly installment of compensation for temporary
 38 disability is due fourteen (14) days after the disability begins. Not later
 39 than fifteen (15) days from the date that the first installment of
 40 compensation is due, the employer or the employer's insurance carrier
 41 shall tender to the employee or to the employee's dependents, with all
 42 compensation due, a properly prepared compensation agreement in a

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form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed injury. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund. An employer that fails to pay the temporary total disability compensation required by this section shall pay the employee for each day that the amount due the employee remains unpaid a penalty equal to ten percent (10%) of the amount due the employee in addition to the compensation due. The maximum penalty payable under this subsection is twice the unpaid temporary total disability compensation due the employee. The employee may recover the unpaid temporary total disability compensation and the penalty described in this subsection in a suit before the worker's compensation board along with reasonable attorney's fees.

(c) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to any employment;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 6 of this chapter or has refused to accept suitable

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1 employment under section 11 of this chapter;
 2 (4) the employee has received five hundred (500) weeks of
 3 temporary total disability benefits or has been paid the maximum
 4 compensation allowed under section 22 of this chapter; ~~or~~
 5 (5) the employee is unable or unavailable to work for reasons
 6 unrelated to the compensable injury; **or**
 7 **(6) the employee returns to work with limitations or**
 8 **restrictions, and the employer converts temporary total**
 9 **disability or temporary partial disability compensation into**
 10 **disabled from trade compensation under section 33 of this**
 11 **chapter.**

12 In all other cases the employer must notify the employee in writing of
 13 the employer's intent to terminate the payment of temporary total
 14 disability benefits and of the availability of employment, if any, on a
 15 form approved by the board. If the employee disagrees with the
 16 proposed termination, the employee must give written notice of
 17 disagreement to the board and the employer within seven (7) days after
 18 receipt of the notice of intent to terminate benefits. If the board and
 19 employer do not receive a notice of disagreement under this section,
 20 the employee's temporary total disability benefits shall be terminated.
 21 Upon receipt of the notice of disagreement, the board shall immediately
 22 contact the parties, which may be by telephone or other means, and
 23 attempt to resolve the disagreement. If the board is unable to resolve
 24 the disagreement within ten (10) days of receipt of the notice of
 25 disagreement, the board shall immediately arrange for an evaluation of
 26 the employee by an independent medical examiner. The independent
 27 medical examiner shall be selected by mutual agreement of the parties
 28 or, if the parties are unable to agree, appointed by the board under
 29 IC 22-3-4-11. If the independent medical examiner determines that the
 30 employee is no longer temporarily disabled or is still temporarily
 31 disabled but can return to employment that the employer has made
 32 available to the employee, or if the employee fails or refuses to appear
 33 for examination by the independent medical examiner, temporary total
 34 disability benefits may be terminated. If either party disagrees with the
 35 opinion of the independent medical examiner, the party shall apply to
 36 the board for a hearing under IC 22-3-4-5.

37 **(d) If an employer desires to have an employee examined by a**
 38 **physician other than the employee's attending physician (described**
 39 **in section 4 of this chapter) to determine the employee's:**

40 **(1) temporary total disability; or**

41 **(2) permanent partial impairment rating;**

42 **the employer shall petition the board for the appointment of an**

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independent medical examiner under IC 22-3-4-11. The employer shall pay the fees and expenses of the independent medical examination. The independent medical examiner's appointment and determination of the employee's quiescence or level of impairment is in lieu of any other rights provided to the employee under this section.

(e) If:

(1) the transfer or redirection of an employee's medical treatment occurs;

(2) the physician to whom the employee is transferred or redirected is not appointed as an independent medical examiner under subsection (d); and

(3) the physician to whom the employee is transferred or redirected issues a determination as to the employee's:

(A) temporary total disability; or

(B) permanent partial impairment;

within sixty (60) days of the date the physician first examines or treats the employee, the physician's determination is not admissible in a proceeding to determine the employee's temporary total disability or permanent partial impairment.

(f) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(g) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 8. IC 22-3-3-10, AS AMENDED BY P.L.31-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) ~~With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to July 1, 1971, the~~

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employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries; a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries; a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred dollars (\$100) average weekly wages; for the periods stated for the injuries. With respect to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury; a weekly compensation of sixty percent (60%) of his average weekly wages; not to exceed one hundred twenty-five dollars (\$125) average weekly wages; for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not to exceed fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury.

(b) With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

(c) With respect to injuries in the following schedule occurring on and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

(d) With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly

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wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury:

- (1) Amputation: For the loss by separation of the thumb, sixty (60) weeks, of the index finger forty (40) weeks, of the second finger thirty-five (35) weeks, of the third or ring finger thirty (30) weeks, of the fourth or little finger twenty (20) weeks, of the hand by separation below the elbow joint two hundred (200) weeks, or the arm above the elbow two hundred fifty (250) weeks, of the big toe sixty (60) weeks, of the second toe thirty (30) weeks, of the third toe twenty (20) weeks, of the fourth toe fifteen (15) weeks, of the fifth or little toe ten (10) weeks; ~~and for loss occurring before April 1, 1959, by separation of the foot below the knee joint one hundred fifty (150) weeks and of the leg above the knee joint two hundred (200) weeks;~~ for loss occurring on and after April 1, 1959, by separation of the foot below the knee joint, one hundred seventy-five (175) weeks and of the leg above the knee joint two hundred twenty-five (225) weeks. The loss of more than one (1) phalange of a thumb or toes shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) the period for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger, shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.
- (2) For the loss by separation of both hands or both feet or the total sight of both eyes, or any two (2) such losses in the same accident, five hundred (500) weeks.
- (3) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred seventy-five (175) weeks.
- (4) For the permanent and complete loss of hearing in one (1) ear, seventy-five (75) weeks, and in both ears, two hundred (200) weeks.
- (5) For the loss of one (1) testicle, fifty (50) weeks; for the loss of both testicles, one hundred fifty (150) weeks.

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(b) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in lieu of all other compensation on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to April 1, 1955, the employee shall receive in lieu of all other compensation on account of the injuries a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1955, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred dollars (\$100) average weekly wages, for the period stated for such injuries respectively. With respect to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury.

(e) With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not exceeding fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages for the period stated for the injury.

(f) With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

(g) With respect to injuries in the following schedule occurring on

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and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

(h) With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury.

(1) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid for the same period as for the loss thereof by separation.

(2) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(3) For injuries resulting in total permanent disability, five hundred (500) weeks.

(4) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then in such event compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses, plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(5) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4), compensation shall be paid for a period proportional to the degree of such permanent reduction.

(6) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation

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board, not exceeding five hundred (500) weeks.

(7) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

~~(c)~~ (i) With respect to injuries in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the injury, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the injury occurred.

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; by separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, and for the loss by separation of any of the body parts described in subdivision (3), (5), or (8), on or after July 1, 1999, the dollar values per degree applying on the date of the injury as described in subsection ~~(d)~~ (j) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of

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more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation, thirty-five (35) degrees of permanent impairment.

(6) For the reduction of vision to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(7) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(8) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(9) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(10) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(11) For injuries resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(12) For any permanent reduction of the sight of an eye less than

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1 a total loss as specified in subsection (a)(3), the compensation
 2 shall be paid in an amount proportionate to the degree of a
 3 permanent reduction without correction or glasses. However,
 4 when a permanent reduction without correction or glasses would
 5 result in one hundred percent (100%) loss of vision, then
 6 compensation shall be paid for fifty percent (50%) of the total loss
 7 of vision without glasses, plus an additional amount equal to the
 8 proportionate amount of the reduction with glasses, not to exceed
 9 an additional fifty percent (50%).

10 (13) For any permanent reduction of the hearing of one (1) or both
 11 ears, less than the total loss as specified in subsection (a)(4),
 12 compensation shall be paid in an amount proportionate to the
 13 degree of a permanent reduction.

14 (14) In all other cases of permanent partial impairment,
 15 compensation proportionate to the degree of a permanent partial
 16 impairment, in the discretion of the worker's compensation board,
 17 not exceeding one hundred (100) degrees of permanent
 18 impairment.

19 (15) In all cases of permanent disfigurement which may impair
 20 the future usefulness or opportunities of the employee,
 21 compensation, in the discretion of the worker's compensation
 22 board, not exceeding forty (40) degrees of permanent impairment
 23 except that no compensation shall be payable under this
 24 subdivision where compensation is payable elsewhere in this
 25 section.

26 ~~(d)~~ (j) Compensation for permanent partial impairment shall be paid
 27 according to the degree of permanent impairment for the injury
 28 determined under subsection ~~(c)~~ (i) and the following:

29 (1) With respect to injuries occurring on and after July 1, 1991,
 30 and before July 1, 1992, for each degree of permanent impairment
 31 from one (1) to thirty-five (35), five hundred dollars (\$500) per
 32 degree; for each degree of permanent impairment from thirty-six
 33 (36) to fifty (50), nine hundred dollars (\$900) per degree; for each
 34 degree of permanent impairment above fifty (50), one thousand
 35 five hundred dollars (\$1,500) per degree.

36 (2) With respect to injuries occurring on and after July 1, 1992,
 37 and before July 1, 1993, for each degree of permanent impairment
 38 from one (1) to twenty (20), five hundred dollars (\$500) per
 39 degree; for each degree of permanent impairment from
 40 twenty-one (21) to thirty-five (35), eight hundred dollars (\$800)
 41 per degree; for each degree of permanent impairment from
 42 thirty-six (36) to fifty (50), one thousand three hundred dollars

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1 (\$1,300) per degree; for each degree of permanent impairment
 2 above fifty (50), one thousand seven hundred dollars (\$1,700) per
 3 degree.

4 (3) With respect to injuries occurring on and after July 1, 1993,
 5 and before July 1, 1997, for each degree of permanent impairment
 6 from one (1) to ten (10), five hundred dollars (\$500) per degree;
 7 for each degree of permanent impairment from eleven (11) to
 8 twenty (20), seven hundred dollars (\$700) per degree; for each
 9 degree of permanent impairment from twenty-one (21) to
 10 thirty-five (35), one thousand dollars (\$1,000) per degree; for
 11 each degree of permanent impairment from thirty-six (36) to fifty
 12 (50), one thousand four hundred dollars (\$1,400) per degree; for
 13 each degree of permanent impairment above fifty (50), one
 14 thousand seven hundred dollars (\$1,700) per degree.

15 (4) With respect to injuries occurring on and after July 1, 1997,
 16 and before July 1, 1998, for each degree of permanent impairment
 17 from one (1) to ten (10), seven hundred fifty dollars (\$750) per
 18 degree; for each degree of permanent impairment from eleven
 19 (11) to thirty-five (35), one thousand dollars (\$1,000) per degree;
 20 for each degree of permanent impairment from thirty-six (36) to
 21 fifty (50), one thousand four hundred dollars (\$1,400) per degree;
 22 for each degree of permanent impairment above fifty (50), one
 23 thousand seven hundred dollars (\$1,700) per degree.

24 (5) With respect to injuries occurring on and after July 1, 1998,
 25 and before July 1, 1999, for each degree of permanent impairment
 26 from one (1) to ten (10), seven hundred fifty dollars (\$750) per
 27 degree; for each degree of permanent impairment from eleven
 28 (11) to thirty-five (35), one thousand dollars (\$1,000) per degree;
 29 for each degree of permanent impairment from thirty-six (36) to
 30 fifty (50), one thousand four hundred dollars (\$1,400) per degree;
 31 for each degree of permanent impairment above fifty (50), one
 32 thousand seven hundred dollars (\$1,700) per degree.

33 (6) With respect to injuries occurring on and after July 1, 1999,
 34 and before July 1, 2000, for each degree of permanent impairment
 35 from one (1) to ten (10), nine hundred dollars (\$900) per degree;
 36 for each degree of permanent impairment from eleven (11) to
 37 thirty-five (35), one thousand one hundred dollars (\$1,100) per
 38 degree; for each degree of permanent impairment from thirty-six
 39 (36) to fifty (50), one thousand six hundred dollars (\$1,600) per
 40 degree; for each degree of permanent impairment above fifty (50),
 41 two thousand dollars (\$2,000) per degree.

42 (7) With respect to injuries occurring on and after July 1, 2000,

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and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to injuries occurring on and after July 1, 2001, **and before July 1, 2004**, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(9) With respect to injuries occurring on and after July 1, 2004, **and before July 1, 2005**, for each degree of permanent impairment from one (1) to ten (10), one thousand nine hundred dollars (\$1,900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand one hundred dollars (\$2,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand six hundred dollars (\$3,600) per degree; for each degree of permanent impairment above fifty (50), four thousand five hundred dollars (\$4,500) per degree.

(10) With respect to injuries occurring on and after July 1, 2005, **and before July 1, 2006**, for each degree of permanent impairment from one (1) to ten (10), two thousand one hundred dollars (\$2,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand three hundred dollars (\$2,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), four thousand dollars (\$4,000) per degree; for each degree of permanent impairment above fifty (50), five thousand dollars (\$5,000) per degree.

(11) With respect to injuries occurring on and after July 1, 2006, for each degree of permanent impairment from one (1) to ten (10), two thousand three hundred dollars (\$2,300) per

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degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand five hundred dollars (\$2,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), four thousand four hundred dollars (\$4,400) per degree; for each degree of permanent impairment above fifty (50), five thousand five hundred dollars (\$5,500) per degree.

~~(e)~~ (k) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections ~~(e)~~ (i) and ~~(d)~~ (j) shall not exceed the following:

(1) With respect to injuries occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to injuries occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to injuries occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to injuries occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to injuries occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to injuries occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to injuries occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to injuries occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, and before July 1, 2004, eight hundred eighty-two dollars (\$882).

(11) With respect to injuries occurring on or after July 1, 2004, and before July 1, 2005, one thousand two dollars (\$1,002).

(12) With respect to injuries occurring on or after July 1, 2005, and before July 1, 2006, one thousand sixty-two dollars (\$1,062).

(13) With respect to injuries occurring on or after July 1, 2006, one thousand one hundred twenty-two dollars (\$1,122).

SECTION 9. IC 22-3-3-13, AS AMENDED BY P.L.178-2003, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. ~~(a)~~ As used in this section, "board" refers to

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the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand; one (1) arm; one (1) foot; one (1) leg; or one (1) eye; and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye; the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund; and created in the manner described in subsection (c):

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period; the board shall send notice not later than October 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk; stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk; shall, within thirty (30) days of the board sending notice under this subsection; pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for temporary total disability; temporary partial disability; permanent total impairment; permanent partial impairment; or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed

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under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000); the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected; and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of insurance producer commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state; to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section; and shall be paid for that purpose by the

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1 ~~treasurer of state upon award or order of the board.~~

2 ~~(g)~~ (a) If an employee who is entitled to compensation under
3 IC 22-3-2 through IC 22-3-6 either:

4 (1) exhausts the maximum benefits under section 22 of this
5 chapter without having received the full amount of award granted
6 to the employee under section 10 of this chapter; or

7 (2) exhausts the employee's benefits under section 10 of this
8 chapter;

9 then such employee may apply to the board, who may award the
10 employee compensation from the second injury fund established by ~~this~~
11 ~~section, IC 22-3-4-15~~, as follows under subsection ~~(h)~~: (b).

12 ~~(h)~~ (b) An employee who has exhausted the employee's maximum
13 benefits under section 10 of this chapter may be awarded additional
14 compensation equal to sixty-six and two-thirds percent (66 2/3%) of the
15 employee's average weekly wage at the time of the employee's injury,
16 not to exceed the maximum then applicable under section 22 of this
17 chapter, for a period of not to exceed one hundred fifty (150) weeks
18 upon competent evidence sufficient to establish:

19 (1) that the employee is totally and permanently disabled from
20 causes and conditions of which there are or have been objective
21 conditions and symptoms proven that are not within the physical
22 or mental control of the employee; and

23 (2) that the employee is unable to support the employee in any
24 gainful employment, not associated with rehabilitative or
25 vocational therapy.

26 ~~(i)~~ (c) The additional award may be renewed during the employee's
27 total and permanent disability after appropriate hearings by the board
28 for successive periods not to exceed one hundred fifty (150) weeks
29 each. The provisions of this section apply only to injuries occurring
30 subsequent to April 1, 1950, for which awards have been or are in the
31 future made by the board under section 10 of this chapter. Section 16
32 of this chapter does not apply to compensation awarded from the
33 second injury fund under this section.

34 ~~(j) All insurance carriers subject to an assessment under this section~~
35 ~~are required to provide to the board:~~

36 ~~(1) not later than January 31 each calendar year; and~~

37 ~~(2) not later than thirty (30) days after a change occurs;~~

38 ~~the name, address, and electronic mail address of a representative~~
39 ~~authorized to receive the notice of an assessment.~~

40 SECTION 10. IC 22-3-3-22, AS AMENDED BY P.L.31-2000,
41 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2004]: Sec. 22. (a) ~~In computing the compensation under this~~

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law with respect to injuries occurring on and after April 1, 1963, and prior to April 1, 1965, the average weekly wages shall be considered to be not more than seventy dollars (\$70) nor less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1965, and prior to April 1, 1967, the average weekly wages shall be considered to be not more than seventy-five dollars (\$75) and not less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1967, and prior to April 1, 1969, the average weekly wages shall be considered to be not more than eighty-five dollars (\$85) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1969, and prior to July 1, 1971, the average weekly wages shall be considered to be not more than ninety-five dollars (\$95) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, the average weekly wages shall be considered to be: (A) Not more than: (1) one hundred dollars (\$100) if no dependents; (2) one hundred five dollars (\$105) if one (1) dependent; (3) one hundred ten dollars (\$110) if two (2) dependents; (4) one hundred fifteen dollars (\$115) if three (3) dependents; (5) one hundred twenty dollars (\$120) if four (4) dependents; and (6) one hundred twenty-five dollars (\$125) if five (5) or more dependents; and (B) Not less than thirty-five dollars (\$35). In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be (A) not more than one hundred thirty-five dollars (\$135); and (B) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall in no case exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability and total permanent disability under this law with respect to injuries occurring on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be (1) not more than one hundred fifty-six dollars (\$156) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1977, and before July 1, 1979, the average weekly wages are

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considered to be (1) not more than one hundred eighty dollars (\$180); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable may not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1979, and before July 1, 1980, the average weekly wages are considered to be (1) not more than one hundred ninety-five dollars (\$195); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1980, and before July 1, 1983, the average weekly wages are considered to be (1) not more than two hundred ten dollars (\$210); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1983, and before July 1, 1984, the average weekly wages are considered to be (1) not more than two hundred thirty-four dollars (\$234) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1984, and before July 1, 1985, the average weekly wages are considered to be (1) not more than two hundred forty-nine dollars (\$249) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be:

- (1) not more than two hundred sixty-seven dollars (\$267); and
- (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(b) In computing compensation for temporary total disability,

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temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1986, and before July 1, 1988, the average weekly wages are considered to be:

(1) not more than two hundred eighty-five dollars (\$285); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(c) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be:

(1) not more than three hundred eighty-four dollars (\$384); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(d) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be:

(1) not more than four hundred eleven dollars (\$411); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(e) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

(1) not more than four hundred forty-one dollars (\$441); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

(1) not more than four hundred ninety-two dollars (\$492); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1992, and before July 1, 1993,

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the average weekly wages are considered to be:

(1) not more than five hundred forty dollars (\$540); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

(1) not more than five hundred ninety-one dollars (\$591); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

(1) not more than six hundred forty-two dollars (\$642); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

~~(b)~~ **(j)** In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

(1) with respect to injuries occurring on and after July 1, 1997, and before July 1, 1998:

(A) not more than six hundred seventy-two dollars (\$672); and

(B) not less than seventy-five dollars (\$75);

(2) with respect to injuries occurring on and after July 1, 1998, and before July 1, 1999:

(A) not more than seven hundred two dollars (\$702); and

(B) not less than seventy-five dollars (\$75);

(3) with respect to injuries occurring on and after July 1, 1999, and before July 1, 2000:

(A) not more than seven hundred thirty-two dollars (\$732);

and

(B) not less than seventy-five dollars (\$75);

(4) with respect to injuries occurring on and after July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to injuries occurring on and after July 1, 2001,

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and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822);
and

(B) not less than seventy-five dollars (\$75); ~~and~~

(6) with respect to injuries occurring on and after July 1, 2002,
and before July 1, 2004:

(A) not more than eight hundred eighty-two dollars (\$882);
and

(B) not less than seventy-five dollars (\$75);

**(7) with respect to injuries occurring on and after July 1,
2004, and before July 1, 2005:**

(A) not more than one thousand two dollars (\$1,002); and

(B) not less than forty (40) times the state minimum wage
established by IC 22-2-2;

**(8) with respect to injuries occurring on and after July 1,
2005, and before July 1, 2006:**

(A) not more than one thousand sixty-two dollars (\$1,062);
and

(B) not less than forty (40) times the state minimum wage
established by IC 22-2-2; and

**(9) with respect to injuries occurring on and after July 1,
2006:**

(A) not more than one thousand one hundred twenty-two
dollars (\$1,122); and

(B) not less than forty (40) times the state minimum wage
established by IC 22-2-2.

However, the weekly compensation payable shall not exceed the **actual**
average weekly wages of the employee at the time of the injury.

(c) For the purpose of this section only and with respect to injuries
occurring on and after July 1, 1971, and prior to July 1, 1974, only, the
term "dependent" as used in this section shall mean persons defined as
presumptive dependents under section 19 of this chapter, except that
such dependency shall be determined as of the date of the injury to the
employee.

(d) With respect to any injury occurring on and after April 1, 1955,
and prior to April 1, 1957, the maximum compensation exclusive of
medical benefits, which shall be paid for an injury under any provisions
of this law or under any combination of its provisions shall not exceed
twelve thousand five hundred dollars (\$12,500) in any case. With
respect to any injury occurring on and after April 1, 1957 and prior to
April 1, 1963, the maximum compensation exclusive of medical
benefits, which shall be paid for an injury under any provision of this

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law or under any combination of its provisions shall not exceed fifteen thousand dollars (\$15,000) in any case. With respect to any injury occurring on and after April 1, 1963, and prior to April 1, 1965, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provision of this law or under any combination of its provisions shall not exceed sixteen thousand five hundred dollars (\$16,500) in any case. With respect to any injury occurring on and after April 1, 1965, and prior to April 1, 1967, the maximum compensation exclusive of medical benefits which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed twenty thousand dollars (\$20,000) in any case. With respect to any injury occurring on and after April 1, 1967, and prior to July 1, 1971, the maximum compensation exclusive of medical benefits which shall be paid for an injury under any provision of this law or any combination of provisions shall not exceed twenty-five thousand dollars (\$25,000) in any case. With respect to any injury occurring on and after July 1, 1971, and prior to July 1, 1974, the maximum compensation exclusive of medical benefits which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed thirty thousand dollars (\$30,000) in any case. With respect to any injury occurring on and after July 1, 1974, and before July 1, 1976, the maximum compensation exclusive of medical benefits which shall be paid for an injury under any provision of this law or any combination of provisions shall not exceed forty-five thousand dollars (\$45,000) in any case. With respect to an injury occurring on and after July 1, 1976, and before July 1, 1977, the maximum compensation, exclusive of medical benefits, which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed fifty-two thousand dollars (\$52,000) in any case. With respect to any injury occurring on and after July 1, 1977, and before July 1, 1979, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provision of this law or any combination of provisions may not exceed sixty thousand dollars (\$60,000) in any case. With respect to any injury occurring on and after July 1, 1979, and before July 1, 1980, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed sixty-five thousand dollars (\$65,000) in any case. With respect to any injury occurring on and after July 1, 1980, and before July 1, 1983, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed

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seventy thousand dollars (\$70,000) in any case. With respect to any injury occurring on and after July 1, 1983, and before July 1, 1984, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed seventy-eight thousand dollars (\$78,000) in any case. With respect to any injury occurring on and after July 1, 1984, and before July 1, 1985, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed eighty-three thousand dollars (\$83,000) in any case.

(k) With respect to any injury occurring on and after July 1, 1985, and before July 1, 1986, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case.

(l) With respect to any injury occurring on and after July 1, 1986, and before July 1, 1988, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed ninety-five thousand dollars (\$95,000) in any case.

(m) With respect to any injury occurring on and after July 1, 1988, and before July 1, 1989, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

(n) With respect to any injury occurring on and after July 1, 1989, and before July 1, 1990, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

(o) With respect to any injury occurring on and after July 1, 1990, and before July 1, 1991, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

(p) With respect to any injury occurring on and after July 1, 1991, and before July 1, 1992, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) With respect to any injury occurring on and after July 1, 1992, and before July 1, 1993, the maximum compensation, exclusive of

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1 medical benefits, that may be paid for an injury under any provisions
 2 of this law or any combination of provisions may not exceed one
 3 hundred eighty thousand dollars (\$180,000) in any case.

4 **(r)** With respect to any injury occurring on and after July 1, 1993,
 5 and before July 1, 1994, the maximum compensation, exclusive of
 6 medical benefits, that may be paid for an injury under any provisions
 7 of this law or any combination of provisions may not exceed one
 8 hundred ninety-seven thousand dollars (\$197,000) in any case.

9 **(s)** With respect to any injury occurring on and after July 1, 1994,
 10 and before July 1, 1997, the maximum compensation, exclusive of
 11 medical benefits, which may be paid for an injury under any provisions
 12 of this law or any combination of provisions may not exceed two
 13 hundred fourteen thousand dollars (\$214,000) in any case.

14 **(t)** The maximum compensation, exclusive of medical benefits,
 15 that may be paid for an injury under any provision of this law or any
 16 combination of provisions may not exceed the following amounts in
 17 any case:

18 (1) With respect to an injury occurring on and after July 1, 1997,
 19 and before July 1, 1998, two hundred twenty-four thousand
 20 dollars (\$224,000).

21 (2) With respect to an injury occurring on and after July 1, 1998,
 22 and before July 1, 1999, two hundred thirty-four thousand dollars
 23 (\$234,000).

24 (3) With respect to an injury occurring on and after July 1, 1999,
 25 and before July 1, 2000, two hundred forty-four thousand dollars
 26 (\$244,000).

27 (4) With respect to an injury occurring on and after July 1, 2000,
 28 and before July 1, 2001, two hundred fifty-four thousand dollars
 29 (\$254,000).

30 (5) With respect to an injury occurring on and after July 1, 2001,
 31 and before July 1, 2002, two hundred seventy-four thousand
 32 dollars (\$274,000).

33 (6) With respect to an injury occurring on and after July 1, 2002,
 34 **and before July 1, 2004**, two hundred ninety-four thousand
 35 dollars (\$294,000).

36 **(7) With respect to an injury occurring on and after July 1,**
 37 **2004, and before July 1, 2005, three hundred thirty-four**
 38 **thousand dollars (\$334,000).**

39 **(8) With respect to an injury occurring on and after July 1,**
 40 **2005, and before July 1, 2006, three hundred fifty-four**
 41 **thousand dollars (\$354,000).**

42 **(9) With respect to an injury occurring on and after July 1,**

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2006, three hundred seventy-four thousand dollars (\$374,000).

SECTION 11. IC 22-3-3-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) The power and jurisdiction of the worker's compensation board over each case shall be continuing and from time to time it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in IC 22-3-2 through IC 22-3-6.

(b) Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

(c) The board shall not make any ~~such~~ modification upon its own motion ~~nor shall or upon~~ any application ~~therefor be~~ filed by either party after the expiration of two (2) years from **the latest of the following:**

(1) the last day for which compensation was paid ~~under the original award made either by agreement or upon hearing; except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid:~~ **for temporary total disability, permanent partial impairment, or permanent total disability.**

(2) **The date of an award for temporary total disability, permanent partial impairment, or permanent total disability.**

(3) **The last day that medical expenses under section 4 of this chapter were provided to the employee.**

The board may at any time correct any clerical error in any finding or award.

SECTION 12. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) **If an employee:**

(1) **receives an injury that results in a temporary total disability or a temporary partial disability;**

(2) **is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's injury; and**

(3) **is enrolled in a training program approved by:**

(A) **the incumbent workers training board established by IC 22-4-18.3-2; or**

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1 **(B) the unemployment insurance board created by**
 2 **IC 22-4-18-2;**

3 **the employee may receive disabled from trade compensation.**

4 **(b) An employee may receive disabled from trade compensation**
 5 **for a period not to exceed:**

6 **(1) fifty-two (52) consecutive weeks; or**

7 **(2) seventy-eight (78) total weeks.**

8 **(c) An employee is entitled to receive disabled from trade**
 9 **compensation in a weekly amount equal to the difference between**
 10 **the employee's average weekly wage from employment at the time**
 11 **of the injury and the employee's average weekly wage from**
 12 **employment after the injury with the permanent restrictions or**
 13 **limitations resulting from the injury.**

14 **(d) The amount of disabled from trade compensation may not**
 15 **exceed the maximum average weekly wage amounts set forth in**
 16 **section 22 of this chapter.**

17 **(e) Not later than sixty (60) days after the employee's release to**
 18 **return to work with restrictions or limitations, the employee must**
 19 **receive notice from the employer on a form provided by the board**
 20 **that informs the employee that the employee has been released to**
 21 **work with limitations or restrictions. The notice must include:**

22 **(1) an explanation of the limitations or restrictions placed on**
 23 **the employee;**

24 **(2) the amount of disabled from trade compensation the**
 25 **employee has been awarded; and**

26 **(3) information for the employee regarding the terms of this**
 27 **section.**

28 **(f) Disabled from trade compensation is in addition to any other**
 29 **compensation awarded to an employee as a result of a temporary**
 30 **total disability or a permanent partial impairment.**

31 **(g) An employer may unilaterally convert an award of**
 32 **compensation for a temporary total disability or a temporary**
 33 **partial disability into disabled from trade compensation by filing**
 34 **a copy of the notice required under subsection (e) with the board.**

35 **SECTION 13. IC 22-3-4-2 IS AMENDED TO READ AS**
 36 **FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The worker's**
 37 **compensation board may make rules not inconsistent with IC 22-3-2**
 38 **through IC 22-3-6 for carrying out the provisions of IC 22-3-2 through**
 39 **IC 22-3-6. Processes and procedures under IC 22-3-2 through**
 40 **IC 22-3-6 shall be as summary and simple as reasonably may be. The**
 41 **board or any member of the board shall have the power for the purpose**
 42 **of IC 22-3-2 through IC 22-3-6 to subpoena witnesses, administer or**

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1 cause to have administered oaths, and to examine or cause to have
2 examined such parts of the books and records of the parties to a
3 proceeding as relate to questions in dispute.

4 (b) The county sheriff shall serve all subpoenas of the board **and the**
5 **board ombudsmen appointed under IC 22-3-1-1** and shall receive
6 the same fees as provided by law for like service in civil actions. Each
7 witness who appears in obedience to such subpoenas of the board shall
8 receive for attendance the fees and mileage for witnesses in civil cases
9 in the courts.

10 (c) The circuit or superior court shall, on application of the board or
11 any member of the board, enforce by proper proceedings the attendance
12 and testimony of witnesses and the production and examination of
13 books, papers, and records.

14 SECTION 14. IC 22-3-4-5 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If the employer
16 and the injured employee or the injured employee's dependents
17 disagree in regard to the compensation payable under IC 22-3-2
18 through IC 22-3-6 or, if they have reached such an agreement, which
19 has been signed by them, filed with and approved by the worker's
20 compensation board, and afterward disagree as to the continuance of
21 payments under such agreement, or as to the period for which payments
22 shall be made, or to the amount to be paid, because of a change in
23 conditions since the making of such agreement, either party may then
24 make an application to the board for the determination of the matters
25 in dispute.

26 (b) Upon the filing of such application, the board shall set the date
27 of hearing, which shall be as early as practicable, and shall notify the
28 employee, employer, and attorneys of record in the manner prescribed
29 by the board of the time and place of all hearings and requests for
30 continuances. The hearing of all claims for compensation, on account
31 of injuries occurring within the state, shall be held in the county in
32 which the injury occurred, **or** in any adjoining county, except when the
33 parties consent to a hearing elsewhere. Claims assigned to an
34 individual board member that are considered to be of an emergency
35 nature by that board member, may be heard in any county within the
36 board member's jurisdiction.

37 (c) All disputes arising under IC 22-3-2 through IC 22-3-6, if not
38 settled by the agreement of the parties interested therein, with the
39 approval of the board, shall be determined by the board.

40 SECTION 15. IC 22-3-4-6 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. The board by any or
42 all of its members **or the board ombudsmen appointed under**

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1 **IC 22-3-1-1** shall hear the parties at issue, their representatives and
 2 witnesses, and shall determine the dispute in a summary manner. The
 3 award shall be filed with the record of proceedings, and a copy thereof
 4 shall immediately be sent to each of the employee, employer, and
 5 attorney of record in the dispute.

6 SECTION 16. IC 22-3-4-9 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Upon order of the
 8 worker's compensation board made after five (5) days notice is given
 9 to the opposite party, any party in interest may file in the circuit or
 10 superior court of the county in which the injury occurred a certified
 11 copy of:

- 12 (1) the memorandum of agreement approved by the board; ~~or of~~
- 13 (2) an order or decision of the board; ~~or of~~
- 14 (3) an award of the full board unappealed from; or ~~of~~
- 15 (4) an award of the full board affirmed upon an appeal;

16 whereupon said court shall render judgment in accordance therewith
 17 and notify the parties. Such judgment shall have the same effect and all
 18 proceedings in relation thereto shall thereafter be the same as though
 19 said judgment had been rendered in a suit duly heard and determined
 20 by said court.

21 (b) Any such judgment of said circuit or superior court:

- 22 (1) unappealed from; ~~or~~
- 23 (2) affirmed on appeal; or
- 24 (3) modified in obedience to the mandate of the court of appeals;

25 shall be modified to conform to any decision of the worker's
 26 compensation board ending, diminishing, or increasing any weekly
 27 payment under the provisions of IC 22-3-3-27 upon the presentation to
 28 it of a certified copy of such decision.

29 **(c) An employer shall pay a judgment entered under this section**
 30 **not later than thirty (30) days after the date the judgment is final.**

31 **(d) An employer that fails to pay a judgment under this section**
 32 **by the time required by subsection (c) shall pay the employee for**
 33 **each day that the amount due the employee remains unpaid a**
 34 **penalty equal to ten percent (10%) of the amount awarded the**
 35 **employee in addition to the amount due. The maximum penalty**
 36 **payable under this subsection is twice the unpaid amount due the**
 37 **employee. The employee may recover the unpaid judgment and the**
 38 **penalty described in this subsection in any court having**
 39 **jurisdiction of a suit to collect the unpaid judgment along with**
 40 **reasonable attorney's fees.**

41 SECTION 17. IC 22-3-4-10 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. In all proceedings

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before the worker's compensation board or in a court under IC 22-3-2 through IC 22-3-6, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court. **Prejudgment interest shall be awarded at a rate of ten percent (10%) per year, accruing from the date of filing of the application of adjustment of claim as determined under section 5(a) of this chapter.**

SECTION 18. IC 22-3-4-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 15. (a) As used in this section, "board" refers to the worker's compensation board created by IC 22-3-1-1.**

(b) If an employee who from any cause:

- (1) loses the use of one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident or exposure becomes permanently and totally disabled because of the loss, or loss of, another member or eye; or**
- (2) is impaired from an occupational disease and subsequently becomes permanently and totally impaired from a second occupational disease;**

the employer is liable only for the compensation payable for the second injury or impairment. However, in addition to and after the completion of the payment of that compensation, the employee shall be paid the remainder of the compensation that is due for the total permanent disability out of a special fund known as the second injury fund created as described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under IC 22-3-3-4(g) or IC 22-3-7-17(e), continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice to:

- (1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for the:**
 - (A) personal injuries or occupational disease to; or**
 - (B) death of;**
- their employees under this article; and**
- (2) each employer carrying the employer's own risk;**

stating that an assessment is necessary. The board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for the personal injuries or

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1 occupational disease to or the death of their employees under this
 2 article and every employer carrying the employer's own risk, shall,
 3 within thirty (30) days of the board sending notice under this
 4 subsection, pay to the worker's compensation board for the benefit
 5 of the fund an assessed amount equal to the recommended funding
 6 level under subsection (d). For purposes of calculating the
 7 assessment under this subsection, the board may consider
 8 payments for temporary total disability, temporary partial
 9 disability, permanent total impairment, permanent partial
 10 impairment, or death of an employee. The board shall not consider
 11 payments for medical benefits in calculating an assessment under
 12 this subsection. On or before October 1 of any year when the
 13 amount to the credit of the fund is insufficient to fulfill the
 14 obligations of the fund, the board shall assess an amount equal to
 15 the recommended funding level of the total amount of all
 16 compensation paid to employees or their beneficiaries under
 17 IC 22-3-2 through IC 22-3-7 for the calendar year preceding that
 18 date to be paid into the fund.

19 (d) The board shall enter into a contract with an actuary or
 20 another qualified firm that has experience in calculating worker's
 21 compensation liabilities. The actuary or other qualified firm shall
 22 calculate the recommended funding level of the fund based on the
 23 previous year's claims and inform the board of the results of the
 24 calculation. If the amount to the credit of the fund is less than the
 25 amount required under subsection (c), the board may conduct an
 26 assessment under subsection (c). The board shall pay the costs of
 27 the contract under this subsection with money in the fund.

28 (e) An assessment collected under subsection (c) on an employer
 29 who is not self-insured must be based on the employer's premium.
 30 An assessment collected under subsection (c) does not constitute an
 31 element of loss, but for the purpose of collection shall be treated as
 32 a separate cost imposed upon insured employers. An assessment
 33 under this subsection must be collected at the same time and in the
 34 same manner in which the premium for coverage is collected, and
 35 must be shown as a separate amount on a premium statement. An
 36 assessment under this subsection must be excluded from the
 37 definition of premium for all purposes, including the computation
 38 of agent commissions or premium taxes. However, an insurer may
 39 cancel a worker's compensation policy for nonpayment of the
 40 assessment. A cancellation under this subsection must be carried
 41 out under the statutes applicable to the nonpayment of premiums.

42 (f) The sums shall be paid by the board to the treasurer of state,

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to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund under this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs; the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

(h) For each day an:

(1) insurance carrier or other entity insuring or providing coverage to an employer that is or may be liable to pay compensation for the:

(A) personal injuries or occupational disease to; or

(B) death of;

the employer's employees under this article; or

(2) employer carrying the employer's own risk;

fails to pay an assessment after the day it is due under this section, the board shall assess a fine of not more than ten percent (10%) of the assessment due, but not less than five hundred dollars (\$500), payable to the second injury fund created under subsection (b).

(i) In addition to assessing the fine provided under subsection (h), the board shall refer an insurance carrier that does not comply with this section to the department of insurance for administrative action for committing an unfair or a deceptive act and practice under IC 27-4-1.

SECTION 19. IC 22-3-5-6, AS AMENDED BY P.L.202-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) The worker's compensation supplemental administrative fund is established for the ~~purpose of~~ following purposes:

(1) Carrying out the administrative purposes and functions of the worker's compensation board.

(2) Administering the costs of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the occupational diseases law (IC 22-3-7).

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(b) The fund consists of the following:

(1) Assessments collected under section 7 of this chapter.

(2) Fees collected from employers under sections 1 through 2 of this chapter. ~~and from~~

(3) Fees collected under IC 22-3-2-14.5 and IC 22-3-7-34.5.

(4) Money received from any other source.

(5) Interest earned from money in the fund.

(6) Earnings acquired through the use of money from the fund.

(7) Interest and penalties collected.

(c) The fund shall be administered by the worker's compensation board. ~~The expenses of administering the fund shall be paid from money in the fund.~~

(d) Money in the fund is annually appropriated to the worker's compensation board and shall be used ~~for all expenses incurred by the worker's compensation board to carry out the purposes listed in subsection (a).~~

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(b) The money in the fund is not to be used to replace funds otherwise appropriated to the board: (f) Money in the fund at the end of the state fiscal year does not revert to the state general fund.

SECTION 20. IC 22-3-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) As used in this section, "board" refers to the worker's compensation board established by IC 22-3-1-1.

(b) Not later than May 1 of each year, the board, subject to the budget agency's approval, shall calculate the recommended funding level of the worker's compensation supplemental administrative fund established by section 6 of this chapter based on the previous fiscal year's expenses of adequately administering and the projected increases necessary to adequately administer the worker's compensation system.

(c) Not later than June 1 of each year, the board shall send notice to:

(1) all insurance carriers and other entities insuring or providing coverage to employers that are required under section 1 of this chapter or IC 22-3-7-34 to insure or keep insured for employer liability under IC 22-3-2 through IC 22-3-7; and

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(2) each employer carrying the employer's own risk under section 1 of this chapter or IC 22-3-7-34; of the amount of the assessment as determined under subsection (b).

(d) Not later than thirty (30) days after receiving notice from the board, every insurer described in subsection (c)(1) and every employer described in subsection (c)(2) shall pay the assessment to the board for the benefit of the worker's compensation supplemental administrative fund created by section 6 of this chapter.

(e) An assessment collected under subsection (d) on an employer that is not self-insured must be based on the employer's premium. The assessment collected under subsection (d) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed on insured employers. The assessment under this section shall be collected at the same time and in the same manner in which the premium for coverage is collected and must be shown as a separate amount on a premium statement. An assessment under this section must be excluded from the definition of premium for all purposes, including the computation of agent commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the assessment under the statutes applicable to the nonpayment of premiums.

(f) The board shall deposit the amounts collected under subsection (d) in the worker's compensation supplemental administrative fund established by section 6 of this chapter.

SECTION 21. IC 22-3-7-16, AS AMENDED BY P.L.1-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Compensation shall be allowed on account of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with:

(1) the eighth day of ~~such~~ the disability, for disablements occurring before July 1, 2004; and

(2) the third day of the disability, for disablements occurring after June 30, 2004;

except for the medical benefits provided for in section 17 of this chapter. For disablements occurring before July 1, 2004, compensation shall be allowed for the first seven (7) calendar days only as provided in ~~this section~~. subsection (g) or (h). For disablements occurring after June 30, 2004, compensation is allowed for the first three (3) calendar days only if the disability continues for at least

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fourteen (14) days. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50); to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund. An employer that fails to pay the temporary total disability compensation required by this section shall pay the employee for each day that the amount due the employee remains unpaid a penalty equal to ten percent (10%) of the amount due the employee in addition to the compensation due. The maximum penalty payable under this subsection is twice the unpaid temporary total disability compensation due the employee. The employee may recover the unpaid temporary total disability compensation and the penalty described in this subsection in a suit before the workers compensation board along with reasonable attorney's fees.

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(b) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to work;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 20 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowable under section 19 of this chapter; **or**
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable disease; **or**

(6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 16.5 of this chapter.

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits, and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) **If an employer desires to have an employee examined by a**

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physician other than the employee's attending physician (described in section 17 of this chapter) to determine the employee's:

(1) temporary total disability; or

(2) permanent partial impairment rating;

the employer shall petition the board for the appointment of an independent medical examiner under IC 22-3-4-11. The employer shall pay the fees and expenses of the independent medical examination. The independent medical examiner's appointment and determination of the employee's quiescence or level of impairment is instead of any other rights provided to the employee under this section.

(d) If:

(1) the transfer or redirection of an employee's medical treatment occurs;

(2) the physician to whom the employee is transferred or redirected is not appointed as an independent medical examiner under subsection (c); and

(3) the physician to whom the employee is transferred or redirected issues a determination as to the employee's:

(A) temporary total disability; or

(B) permanent partial impairment;

within sixty (60) days of the date the physician first examines or treats the employee, the physician's determination is not admissible in a proceeding to determine the employee's temporary total disability or permanent partial impairment.

(e) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

~~(d)~~ (f) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

~~(e)~~ For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to

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sixty percent (60%) of the employee's average weekly wages for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1974, and before July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, up to one hundred thirty-five dollars (\$135) average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(g) For disablements occurring on and after July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. **For disablements occurring before July 1, 2004,** compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. **For disablements occurring after June 30, 2004, compensation is allowed for the first three (3) calendar days only if the disability continues for at least fourteen (14) days.**

(f) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks.

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1 Compensation shall be allowed for the first seven (7) calendar days
 2 only if the disability continues for longer than twenty-eight (28) days.
 3 In case of partial disability after the period of temporary total disability;
 4 the later period shall be included as part of the maximum period
 5 allowed for partial disability.

6 For disablements occurring on and after July 1, 1971, and prior to
 7 July 1, 1974, from occupational disease resulting in temporary partial
 8 disability for work there shall be paid to the disabled employee during
 9 such disability a weekly compensation equal to sixty percent (60%) of
 10 the difference between the employee's average weekly wages, as
 11 defined in section 19 of this chapter, and the weekly wages at which the
 12 employee is actually employed after the disablement, for a period not
 13 to exceed three hundred (300) weeks. Compensation shall be allowed
 14 for the first seven (7) calendar days only if the disability continues for
 15 longer than twenty-eight (28) days. In case of partial disability after the
 16 period of temporary total disability, the latter period shall be included
 17 as a part of the maximum period allowed for partial disability.

18 (h) For disablements occurring on and after July 1, 1974, from
 19 occupational disease resulting in temporary partial disability for work
 20 there shall be paid to the disabled employee during such disability a
 21 weekly compensation equal to sixty-six and two-thirds percent (66
 22 2/3%) of the difference between the employee's average weekly wages,
 23 as defined in section 19 of this chapter, and the weekly wages at which
 24 ~~he~~ the employee is actually employed after the disablement, for a
 25 period not to exceed three hundred (300) weeks. **For disablements**
 26 **occurring before July 1, 2004**, compensation shall be allowed for the
 27 first seven (7) calendar days only if the disability continues for longer
 28 than twenty-one (21) days. **For disablements occurring after June**
 29 **30, 2004, compensation is allowed for the first three (3) calendar**
 30 **days only if the disability continues for at least fourteen (14) days.**
 31 In case of partial disability after the period of temporary total disability,
 32 the latter period shall be included as a part of the maximum period
 33 allowed for partial disability.

34 (g) For disabilities occurring on and after April 1, 1951, and prior
 35 to April 1, 1955, from occupational disease in the following schedule;
 36 the employee shall receive in lieu of all other compensation, on account
 37 of such disabilities, a weekly compensation of sixty percent (60%) of
 38 the employee's average weekly wage; for disabilities occurring on and
 39 after April 1, 1955, and prior to July 1, 1971, from occupational disease
 40 in the following schedule; the employee shall receive in addition to
 41 disability benefits not exceeding twenty-six (26) weeks on account of
 42 said occupational disease a weekly compensation of sixty percent

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(60%) of the employee's average weekly wages.

For disabilities occurring on and after July 1, 1971, and before July 1, 1977, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of his average weekly wages not to exceed one hundred dollars (\$100) average weekly wages, for the period stated for such disabilities respectively.

For disabilities occurring on and after July 1, 1977, and before July 1, 1979, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of the occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the disabilities.

(i) For disabilities occurring on and after July 1, 1979, and before July 1, 1988, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding fifty-two (52) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the disabilities.

(j) For disabilities occurring on and after July 1, 1988, and before July 1, 1989, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the disabilities.

(k) For disabilities occurring on and after July 1, 1989, and before July 1, 1990, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the disabilities.

(l) For disabilities occurring on and after July 1, 1990, and before July 1, 1991, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average

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1 weekly wages, for the period stated for the disabilities.
 2 (1) Amputations: For the loss by separation, of the thumb, sixty
 3 (60) weeks; of the index finger, forty (40) weeks; of the second
 4 finger, thirty-five (35) weeks; of the third or ring finger, thirty
 5 (30) weeks; of the fourth or little finger, twenty (20) weeks; of the
 6 hand by separation below the elbow, two hundred (200) weeks; of
 7 the arm above the elbow joint, two hundred fifty (250) weeks; of
 8 the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks;
 9 of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15)
 10 weeks; of the fifth or little toe, ten (10) weeks; of the foot below
 11 the knee joint, one hundred fifty (150) weeks; and of the leg
 12 above the knee joint, two hundred (200) weeks. The loss of more
 13 than one (1) phalange of a thumb or toe shall be considered as the
 14 loss of the entire thumb or toe. The loss of more than two (2)
 15 phalanges of a finger shall be considered as the loss of the entire
 16 finger. The loss of not more than one (1) phalange of a thumb or
 17 toe shall be considered as the loss of one-half (1/2) of the thumb
 18 or toe and compensation shall be paid for one-half (1/2) of the
 19 period for the loss of the entire thumb or toe. The loss of not more
 20 than two (2) phalanges of a finger shall be considered as the loss
 21 of one-half (1/2) the finger and compensation shall be paid for
 22 one-half (1/2) of the period for the loss of the entire finger.
 23 (2) Loss of Use: The total permanent loss of the use of an arm,
 24 hand, thumb, finger, leg, foot, toe, or phalange shall be considered
 25 as the equivalent of the loss by separation of the arm, hand,
 26 thumb, finger, leg, foot, toe, or phalange and the compensation
 27 shall be paid for the same period as for the loss thereof by
 28 separation.
 29 (3) Partial Loss of Use: For the permanent partial loss of the use
 30 of an arm, hand, thumb, finger, leg, foot, toe, or phalange,
 31 compensation shall be paid for the proportionate loss of the use of
 32 such arm, hand, thumb, finger, leg, foot, toe, or phalange.
 33 (4) For disablements for occupational disease resulting in total
 34 permanent disability, five hundred (500) weeks.
 35 (5) For the loss of both hands, or both feet, or the total sight of
 36 both eyes, or any two (2) of such losses resulting from the same
 37 disablement by occupational disease, five hundred (500) weeks.
 38 (6) For the permanent and complete loss of vision by enucleation
 39 of an eye or its reduction to one-tenth (1/10) of normal vision with
 40 glasses, one hundred fifty (150) weeks, and for any other
 41 permanent reduction of the sight of an eye, compensation shall be
 42 paid for a period proportionate to the degree of such permanent

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reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

(m) With respect to disablements in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of

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1 permanent impairment; of the third toe, four (4) degrees of
 2 permanent impairment; of the fourth toe, three (3) degrees of
 3 permanent impairment; of the fifth or little toe, two (2) degrees of
 4 permanent impairment; of separation of the foot below the knee
 5 joint, thirty-five (35) degrees of permanent impairment; and of the
 6 leg above the knee joint, forty-five (45) degrees of permanent
 7 impairment.

8 (2) Amputations occurring on or after July 1, 1997: For the loss
 9 by separation of any of the body parts described in subdivision (1)
 10 on or after July 1, 1997, the dollar values per degree applying on
 11 the date of the injury as described in subsection (h) shall be
 12 multiplied by two (2). However, the doubling provision of this
 13 subdivision does not apply to a loss of use that is not a loss by
 14 separation.

15 (3) The loss of more than one (1) phalange of a thumb or toe shall
 16 be considered as the loss of the entire thumb or toe. The loss of
 17 more than two (2) phalanges of a finger shall be considered as the
 18 loss of the entire finger. The loss of not more than one (1)
 19 phalange of a thumb or toe shall be considered as the loss of
 20 one-half (1/2) of the degrees of permanent impairment for the loss
 21 of the entire thumb or toe. The loss of not more than one (1)
 22 phalange of a finger shall be considered as the loss of one-third
 23 (1/3) of the finger and compensation shall be paid for one-third
 24 (1/3) of the degrees payable for the loss of the entire finger. The
 25 loss of more than one (1) phalange of the finger but not more than
 26 two (2) phalanges of the finger shall be considered as the loss of
 27 one-half (1/2) of the finger and compensation shall be paid for
 28 one-half (1/2) of the degrees payable for the loss of the entire
 29 finger.

30 (4) For the loss by separation of both hands or both feet or the
 31 total sight of both eyes or any two (2) such losses in the same
 32 accident, one hundred (100) degrees of permanent impairment.

33 (5) For the permanent and complete loss of vision by enucleation
 34 or its reduction to one-tenth (1/10) of normal vision with glasses,
 35 thirty-five (35) degrees of permanent impairment.

36 (6) For the permanent and complete loss of hearing in one (1) ear,
 37 fifteen (15) degrees of permanent impairment, and in both ears,
 38 forty (40) degrees of permanent impairment.

39 (7) For the loss of one (1) testicle, ten (10) degrees of permanent
 40 impairment; for the loss of both testicles, thirty (30) degrees of
 41 permanent impairment.

42 (8) Loss of use: The total permanent loss of the use of an arm, a

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hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than a total loss as specified in subdivision (5), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (6), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

~~(h)~~ (n) With respect to disablements occurring on and after July 1, 1991, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement

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determined under subsection ~~(d)~~ (m) and the following:

(1) With respect to disablements occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to disablements occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to disablements occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to disablements occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to disablements occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from

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eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to disablements occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to disablements occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to disablements occurring on and after July 1, 2001, **and before July 1, 2004**, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(9) With respect to disablements occurring on and after July 1, 2004, and before July 1, 2005, for each degree of permanent impairment from one (1) to ten (10), one thousand nine hundred dollars (\$1,900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand one hundred dollars (\$2,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand six hundred dollars (\$3,600) per

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degree; for each degree of permanent impairment above fifty (50), four thousand five hundred six dollars (\$4,500) per degree.

(10) With respect to disablements occurring on and after July 1, 2005, and before July 1, 2006, for each degree of permanent impairment from one (1) to ten (10), two thousand one hundred dollars (\$2,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand three hundred dollars (\$2,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), four thousand dollars (\$4,000) per degree; for each degree of permanent impairment above fifty (50), five thousand dollars (\$5,000) per degree.

(11) With respect to disablements occurring on and after July 1, 2006, for each degree of permanent impairment from one (1) to ten (10), two thousand three hundred dollars (\$2,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand five hundred dollars (\$2,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), four thousand four hundred dollars (\$4,400) per degree; for each degree of permanent impairment above fifty (50), five thousand five hundred dollars (\$5,500) per degree.

(f) (o) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (g) and (h) (i) through (n) shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

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(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to ~~injuries~~ **disablements** occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to ~~injuries~~ **disablements** occurring on or after July 1, 2002, **and before July 1, 2004**, eight hundred eighty-two dollars (\$882).

(11) With respect to disablements occurring on or after July 1, 2004, and before July 1, 2005, one thousand two dollars (\$1,002).

(12) With respect to disablements occurring on or after July 1, 2005, and before July 1, 2006, one thousand sixty-five dollars (\$1,065).

(13) With respect to injuries occurring on or after July 1, 2006, one thousand one hundred twenty-two dollars (\$1,122).

~~(j)~~ **(p)** If any employee, only partially disabled, refuses employment suitable to ~~his~~ **the employee's** capacity, ~~procured for him; he~~ **the employee** shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

~~(k)~~ **(q)** If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which ~~he~~ **the employee** suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational

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disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

~~(t)~~ **(r)** If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, ~~he the~~ **employee** shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection ~~(g)(1), (g)(4), (g)(5), (g)(8)~~ **(l)(1), (l)(4), (l)(5), (l)(8), (l)(9), (m)(1), (m)(4), (m)(5), (m)(8), or (m)(9)**; but the employee shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this chapter.

~~(m)~~ **(s)** If an employee receives a permanent disability from occupational disease such as specified in subsection ~~(g)(1), (g)(4), (g)(5), (g)(8)~~ **(l)(1), (l)(4), (l)(5), (l)(8), (l)(9), (m)(1), (m)(4), (m)(5), (m)(8), or (m)(9)** after having sustained another such permanent disability in the same employment the employee shall be entitled to compensation for both such disabilities, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation and, when such previous and subsequent permanent disabilities, in combination result in total permanent disability or permanent total impairment, compensation shall be payable for such permanent total disability or impairment, but payments made for the previous disability or impairment shall be deducted from the total payment of compensation due.

~~(n)~~ When an employee has been awarded or is entitled to an award of compensation for a definite period under this chapter for disability from occupational disease, which disablement occurs on and after April 1, 1951, and prior to April 1, 1963, and such employee dies from any other cause than such occupational disease, payment of the unpaid balance of such compensation, not exceeding three hundred (300) weeks, shall be made to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter, and compensation, not exceeding five hundred (500) weeks, shall be made to the employee's dependents of the first class as defined in sections 11

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~~through 14 of this chapter.~~ (t) When an employee has been awarded or is entitled to an award of compensation for a definite period from an occupational disease wherein disablement occurs on and after April 1, 1963, and such employee dies from other causes than such occupational disease, payment of the unpaid balance of such compensation not exceeding three hundred fifty (350) weeks shall be paid to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter and compensation, not exceeding five hundred (500) weeks shall be made to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter.

(~~t~~) (u) Any payment made by the employer to the employee during the period of the employee's disability, or to the employee's dependents, which, by the terms of this chapter, was not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(~~p~~) (v) When so provided in the compensation agreement or in the award of the worker's compensation board, compensation may be paid semimonthly, or monthly, instead of weekly.

(~~q~~) (w) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen (18) years of age do not exceed one hundred dollars (\$100), the payment thereof may be made directly to such employee or dependent, except when the worker's compensation board shall order otherwise.

(x) Whenever the aggregate payments of compensation, due to any person under eighteen (18) years of age, exceed one hundred dollars (\$100), the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the worker's compensation board, to a parent or to such minor person. The payment of compensation, due to any person eighteen (18) years of age or over, may be made directly to such person.

(~~r~~) (y) If an employee, or a dependent, is mentally incompetent, or a minor at the time when any right or privilege accrues to the employee under this chapter, the employee's guardian or trustee may, in the employee's behalf, claim and exercise such right and privilege.

(~~s~~) (z) All compensation payments named and provided for in this section, shall mean and be defined to be for only such occupational diseases and disabilities therefrom as are proved by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the

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employee himself.

SECTION 22. IC 22-3-7-16.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 16.1. (a) This section applies only to disablements occurring after June 30, 1999, for which awards are made by the board under this chapter.**

(b) On or after January 1, 2006, if an employee who is entitled to compensation under this chapter either:

(1) exhausts the maximum benefits under this chapter without having received the full amount of award granted to the employee under this chapter; or

(2) exhausts the employee's benefits under this chapter; the employee may apply to the worker's compensation board, which may award the employee compensation from the second injury fund under IC 22-3-4-15 as provided in subsection (c).

(c) An employee who has exhausted the employee's maximum benefits under this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's disablement from occupational disease, not to exceed the maximum applicable under this chapter for a period not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from an occupational disease of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(d) The additional award may be renewed during the employee's period of total and permanent disability after appropriate hearings by the worker's compensation board for successive periods not to exceed one hundred fifty (150) weeks each.

(e) Section 11 of this chapter does not apply to compensation awarded from the second injury fund under this section.

SECTION 23. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 16.5. (a) If an employee:**

(1) suffers an occupational disease that results in a temporary total disability or a temporary partial disability;

(2) is capable of performing work with permanent limitations

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or restrictions that prevent the employee from returning to the position the employee held before the employee's occupational disease; and

(3) is enrolled in a training program approved by:

(A) the incumbent workers training board established by IC 22-4-18.3-2; or

(B) the Indiana unemployment insurance board created by IC 22-4-18-2;

the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

(1) fifty-two (52) consecutive weeks; or

(2) seventy-eight (78) total weeks.

(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to the difference between the employee's average weekly wage from employment at the time of the injury and the employee's average weekly wage from employment after the injury with the permanent restrictions or limitations resulting from the injury.

(d) The amount of disabled from trade compensation may not exceed the maximum average weekly wage amounts set forth in section 19 of this chapter.

(e) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

(1) an explanation of the limitations or restrictions placed on the employee;

(2) the amount of disabled from trade compensation the employee has been awarded; and

(3) information for the employee regarding the terms of this section.

(f) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(g) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (e) with the board.

SECTION 24. IC 22-3-7-17, AS AMENDED BY P.L.31-2000, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 17. (a) During the period of disablement, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of ~~his~~ **the employee's** occupational disease, and in addition thereto such surgical, hospital, and nursing services and supplies as the attending physician or the worker's compensation board may deem necessary. If the employee is requested or required by the employer to submit to treatment outside the county of employment, the employer shall also pay the reasonable expense of travel, food, and lodging necessary during the travel, but not to exceed the amount paid at the time of the travel by the state of Indiana to its employees. If the treatment or travel to or from the place of treatment causes a loss of working time to the employee, the employer shall reimburse the employee for the loss of wages using the basis of the employee's average daily wage.

(b) During the period of disablement resulting from the occupational disease, the employer shall furnish such physician, services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by such physician and such services and supplies be furnished by or on behalf of the employer as the board may deem reasonably necessary. After an employee's occupational disease has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27(i) of this chapter, the employer may continue to furnish a physician or a surgeon and other medical services and supplies, and the board may, within such statutory period for review as provided in section 27(i) of this chapter, on a proper application of either party, require that treatment by such physician or surgeon and such services and supplies be furnished by and on behalf of the employer as the board may deem necessary to limit or reduce the amount and extent of such impairment. The refusal of the employee to accept such services and supplies when so provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of such refusal and ~~his~~ **the employee's** right to prosecute any proceeding under this chapter shall be suspended and abated until such refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of such impairment, disfigurement, or death which is the result of the failure of such employee to accept such

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1 treatment, services, and supplies, provided that an employer may at any
 2 time permit an employee to have treatment for ~~his~~ **the employee's**
 3 disease or injury by spiritual means or prayer in lieu of such physician,
 4 services, and supplies.

5 **(c) After the employee's medical treatment with an attending**
 6 **physician described in subsection (a) begins, neither the employer**
 7 **nor the employer's insurance carrier has the right to transfer or**
 8 **otherwise redirect an employee's medical treatment to another**
 9 **physician unless:**

10 **(1) the employee signs a written informed consent to the**
 11 **transfer or redirection that acknowledges the employee's**
 12 **right to refuse the transfer or redirection;**

13 **(2) the employee requests the transfer or redirection;**

14 **(3) the attending physician requests that:**

15 **(A) the attending physician's treatment of the employee be**
 16 **discontinued; or**

17 **(B) the treatment be transferred or redirected to a**
 18 **physician practicing a different specialty; or**

19 **(4) the worker's compensation board determines that there is**
 20 **good cause for the transfer or redirection.**

21 **(d) If the employer or the employer's insurance carrier desires**
 22 **to transfer or redirect the employee's medical treatment under**
 23 **subsection (c)(4) for good cause, the employer or the employer's**
 24 **insurance carrier shall file a transfer request with the worker's**
 25 **compensation board on forms prescribed by the board. A transfer**
 26 **may not occur until the worker's compensation board issues an**
 27 **order granting the transfer request.**

28 **(e) Regardless of when it occurs, where a compensable occupational**
 29 **disease results in the amputation of a body part, the enucleation of an**
 30 **eye, or the loss of natural teeth, the employer shall furnish an**
 31 **appropriate artificial member, braces, and prosthodontics. The cost of**
 32 **repairs to or replacements for the artificial members, braces, or**
 33 **prosthodontics that result from a compensable occupational disease**
 34 **pursuant to a prior award and are required due to either medical**
 35 **necessity or normal wear and tear, determined according to the**
 36 **employee's individual use, but not abuse, of the artificial member,**
 37 **braces, or prosthodontics, shall be paid from the second injury fund**
 38 **upon order or award of the worker's compensation board. The**
 39 **employee is not required to meet any other requirement for admission**
 40 **to the second injury fund.**

41 **(f) If an emergency or because of the employer's failure to**
 42 **provide such attending physician or such surgical, hospital, or nurse's**

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services and supplies or such treatment by spiritual means or prayer as specified in this section, or for other good reason, a physician other than that provided by the employer treats the diseased employee within the period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within the period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

~~(e)~~ (g) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

(1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or

(2) makes the findings of a provider chosen in this manner binding upon the parties.

~~(f)~~ (h) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this chapter is solely with the board. All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter.

SECTION 25. IC 22-3-7-19, AS AMENDED BY P.L.31-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. ~~(a) In computing compensation for temporary total disability; temporary partial disability; and total permanent disability under this law with respect to occupational diseases occurring:~~

~~(1) on and after July 1, 1974, and before July 1, 1976; the average weekly wages shall be considered to be:~~

~~(A) not more than one hundred thirty-five dollars (\$135); and~~

~~(B) not less than seventy-five dollars (\$75);~~

~~(2) on and after July 1, 1976; and before July 1, 1977; the average weekly wages shall be considered to be:~~

~~(A) not more than one hundred fifty-six dollars (\$156); and~~

~~(B) not less than seventy-five dollars (\$75);~~

~~(3) on and after July 1, 1977; and before July 1, 1979; the average weekly wages are considered to be:~~

~~(A) not more than one hundred eighty dollars (\$180); and~~

~~(B) not less than seventy-five dollars (\$75);~~

~~(4) on and after July 1, 1979; and before July 1, 1980; the average weekly wages are considered to be:~~

~~(A) not more than one hundred ninety-five dollars (\$195); and~~

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(B) not less than seventy-five dollars (\$75);
 (5) on and after July 1, 1980; and before July 1, 1983, the average
 weekly wages are considered to be:

(A) not more than two hundred ten dollars (\$210); and

(B) not less than seventy-five dollars (\$75);

(6) on and after July 1, 1983; and before July 1, 1984, the average
 weekly wages are considered to be:

(A) not more than two hundred thirty-four dollars (\$234); and

(B) not less than seventy-five dollars (\$75); and

(7) on and after July 1, 1984; and before July 1, 1985, the average
 weekly wages are considered to be:

(A) not more than two hundred forty-nine dollars (\$249); and

(B) not less than seventy-five dollars (\$75).

(b) (a) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1985, and before
 July 1, 1986, the average weekly wages are considered to be:

(1) not more than two hundred sixty-seven dollars (\$267); and

(2) not less than seventy-five dollars (\$75).

(c) (b) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1986, and before
 July 1, 1988, the average weekly wages are considered to be:

(1) not more than two hundred eighty-five dollars (\$285); and

(2) not less than seventy-five dollars (\$75).

(d) (c) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1988, and before
 July 1, 1989, the average weekly wages are considered to be:

(1) not more than three hundred eighty-four dollars (\$384); and

(2) not less than seventy-five dollars (\$75).

(e) (d) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1989, and before
 July 1, 1990, the average weekly wages are considered to be:

(1) not more than four hundred eleven dollars (\$411); and

(2) not less than seventy-five dollars (\$75).

(f) (e) In computing compensation for temporary total disability,
 temporary partial disability, and total permanent disability, with respect
 to occupational diseases occurring on and after July 1, 1990, and before
 July 1, 1991, the average weekly wages are considered to be:

(1) not more than four hundred forty-one dollars (\$441); and

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(2) not less than seventy-five dollars (\$75).

~~(g)~~ (f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

(1) not more than four hundred ninety-two dollars (\$492); and

(2) not less than seventy-five dollars (\$75).

~~(h)~~ (g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

(1) not more than five hundred forty dollars (\$540); and

(2) not less than seventy-five dollars (\$75).

~~(i)~~ (h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

(1) not more than five hundred ninety-one dollars (\$591); and

(2) not less than seventy-five dollars (\$75).

~~(j)~~ (i) In computing compensation for temporary total disability, temporary partial disability and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

(1) not more than six hundred forty-two dollars (\$642); and

(2) not less than seventy-five dollars (\$75).

~~(k)~~ (j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

(1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:

(A) not more than six hundred seventy-two dollars (\$672); and

(B) not less than seventy-five dollars (\$75);

(2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:

(A) not more than seven hundred two dollars (\$702); and

(B) not less than seventy-five dollars (\$75);

(3) with respect to occupational diseases occurring on and after July 1, 1999, and before July 1, 2000:

(A) not more than seven hundred thirty-two dollars (\$732);

and

(B) not less than seventy-five dollars (\$75);

(4) with respect to occupational diseases occurring on and after

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July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to disablements occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822);

and

(B) not less than seventy-five dollars (\$75); ~~and~~

(6) with respect to disablements occurring on and after July 1, 2002, **and before July 1, 2004:**

(A) not more than eight hundred eighty-two dollars (\$882);

and

(B) not less than seventy-five dollars (\$75);

(7) with respect to disablements occurring on and after July 1, 2004, and before July 1, 2005:

(A) not more than one thousand two dollars (\$1,002); and

(B) not less than forty (40) times the state minimum wage established by IC 22-2-2;

(8) with respect to disablements occurring on and after July 1, 2005, and before July 1, 2006:

(A) not more than one thousand sixty-two dollars (\$1,062);

and

(B) not less than forty (40) times the state minimum wage established by IC 22-2-2; and

(9) with respect to disablements occurring on and after July 2, 2006;

(A) not more than one thousand one hundred twenty-two dollars (\$1,122); and

(B) not less than forty (40) times the state minimum wage established by IC 22-2-2.

However, the weekly compensation payable shall not exceed the actual average weekly wages of the employee at the time of the disablement.

~~(1) The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this chapter with respect to disability or death occurring:~~

~~(1) on and after July 1, 1974, and before July 1, 1976, shall not exceed forty-five thousand dollars (\$45,000) in any case;~~

~~(2) on and after July 1, 1976, and before July 1, 1977, shall not exceed fifty-two thousand dollars (\$52,000) in any case;~~

~~(3) on and after July 1, 1977, and before July 1, 1979, may not exceed sixty thousand dollars (\$60,000) in any case;~~

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(4) on and after July 1, 1979, and before July 1, 1980, may not exceed sixty-five thousand dollars (\$65,000) in any case;
 (5) on and after July 1, 1980, and before July 1, 1983, may not exceed seventy thousand dollars (\$70,000) in any case;
 (6) on and after July 1, 1983, and before July 1, 1984, may not exceed seventy-eight thousand dollars (\$78,000) in any case; and
 (7) on and after July 1, 1984, and before July 1, 1985, may not exceed eighty-three thousand dollars (\$83,000) in any case.

(m) (k) The maximum compensation with respect to disability or death occurring on and after July 1, 1985, and before July 1, 1986, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1986, and before July 1, 1988, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1988, and before July 1, 1989, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

(n) (l) The maximum compensation with respect to disability or death occurring on and after July 1, 1989, and before July 1, 1990, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

(o) (m) The maximum compensation with respect to disability or death occurring on and after July 1, 1990, and before July 1, 1991, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

(p) (n) The maximum compensation with respect to disability or death occurring on and after July 1, 1991, and before July 1, 1992, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) (o) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this

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chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(p) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(q) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(r) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

(1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to disability or death occurring on and after July 1, 2002, **and before July 1, 2004**, two hundred ninety-four thousand dollars (\$294,000).

(7) With respect to disability or death occurring on and after July 1, 2004, and before July 1, 2005, three hundred thirty-four thousand dollars (\$334,000).

(8) With respect to disability or death occurring on and after July 1, 2005, and before July 1, 2006, three hundred fifty-four thousand dollars (\$354,000).

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(9) With respect to disability or death occurring on and after July 1, 2006, three hundred seventy-four thousand dollars (\$374,000).

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which, during the fifty-two (52) weeks previous to the last day of the last exposure, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee in lieu of wages or a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(v) (s) For all disabilities occurring on and after July 1, 1985, "average weekly wages" means the earnings of the injured employee during the period of fifty-two (52) weeks immediately preceding the disability divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts of weeks remaining after the time lost has been deducted. If employment before the date of disability extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. If by reason of the shortness of the time during which the employee has been

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1 in the employment of the employer or of the casual nature or terms of
 2 the employment it is impracticable to compute the average weekly
 3 wages for the employee, the employee's average weekly wages shall be
 4 considered to be the average weekly amount that, during the fifty-two
 5 (52) weeks before the date of disability, was being earned by a person
 6 in the same grade employed at the same work by the same employer or,
 7 if there is no person so employed, by a person in the same grade
 8 employed in that same class of employment in the same district.
 9 Whenever allowances of any character are made to an employee
 10 instead of wages or a specified part of the wage contract, they shall be
 11 considered a part of the employee's earnings.

12 ~~(w)~~ (t) The provisions of this article may not be construed to result
 13 in an award of benefits in which the number of weeks paid or to be paid
 14 for temporary total disability, temporary partial disability, or permanent
 15 total disability benefits combined exceeds five hundred (500) weeks.
 16 This section shall not be construed to prevent a person from applying
 17 for an award under IC 22-3-3-13. However, in case of permanent total
 18 disability resulting from a disablement occurring on or after January 1,
 19 1998, the minimum total benefit shall not be less than seventy-five
 20 thousand dollars (\$75,000).

21 SECTION 26. IC 22-3-7-24 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 24. (a) The worker's
 23 compensation board may make rules not inconsistent with this chapter
 24 for carrying out the provisions of this chapter. Processes and
 25 procedures under this chapter shall be as summary and simple as
 26 reasonably may be. The board, or any member thereof, shall have the
 27 power, for the purpose of this chapter, to subpoena witnesses,
 28 administer or cause to have administered oaths, and to examine or
 29 cause to have examined such parts of the books and records of the
 30 parties to a proceeding as relate to questions in dispute. The county
 31 sheriff shall serve all subpoenas of the board and **board ombudsmen**
 32 **appointed under IC 22-3-1-1** and shall receive the same fees as
 33 provided by law for like service in civil actions. Each witness who
 34 appears in obedience to such subpoena of the board shall receive for
 35 attendance the fees and mileage for witnesses in civil cases in the
 36 courts. The circuit or superior court shall, on application of the board
 37 or any member thereof, enforce by proper proceedings the attendance
 38 and testimony of witnesses and the production and examination of
 39 books, papers, and records.

40 (b) The fees of attorneys and physicians and charges of nurses and
 41 hospitals for services under this chapter shall be subject to the approval
 42 of the worker's compensation board. When any claimant for

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1 compensation is represented by an attorney in the prosecution of ~~his~~
 2 **the claimant's** claim, the board shall fix and state in the award, if
 3 compensation be awarded, the amount of the claimant's attorney's fees.
 4 The fee so fixed shall be binding upon both the claimant and ~~his~~ **the**
 5 **claimant's** attorney, and the employer shall pay to the attorney, out of
 6 the award, the fee so fixed, and the receipt of the attorney therefor shall
 7 fully acquit the employer for an equal portion of the award.

8 (c) Whenever the worker's compensation board shall determine
 9 upon hearing of a claim that the employer has acted in bad faith in
 10 adjusting and settling said award, or whenever the board shall
 11 determine upon hearing of a claim that the employer has not pursued
 12 the settlement of said claim with diligence, then the board shall, if
 13 compensation be awarded, fix the amount of the claimant's attorney's
 14 fees and such attorney's fees shall be paid to the attorney and shall not
 15 be charged against the award to the claimant. Such fees as are fixed and
 16 awarded on account of a lack of diligence or because of bad faith on the
 17 part of the employer shall not be less than one hundred fifty dollars
 18 (\$150).

19 (d) The worker's compensation board may withhold the approval of
 20 the fees of the attending physician in any case until ~~he shall file the~~
 21 **attending physician files** a report with the board on the form
 22 prescribed by such board.

23 SECTION 27. IC 22-3-7-27, AS AMENDED BY P.L.235-1999,
 24 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2004]: Sec. 27. (a) If the employer and the employee or the
 26 employee's dependents disagree in regard to the compensation payable
 27 under this chapter, or, if they have reached such an agreement, which
 28 has been signed by them, filed with and approved by the worker's
 29 compensation board, and afterward disagree as to the continuance of
 30 payments under such agreement, or as to the period for which payments
 31 shall be made, or as to the amount to be paid, because of a change in
 32 conditions since the making of such agreement, either party may then
 33 make an application to the board for the determination of the matters
 34 in dispute. When compensation which is payable in accordance with an
 35 award or by agreement approved by the board is ordered paid in a lump
 36 sum by the board, no review shall be had as in this subsection
 37 mentioned.

38 (b) The application making claim for compensation filed with the
 39 worker's compensation board shall state the following:

- 40 (1) The approximate date of the last day of the last exposure and
- 41 the approximate date of the disablement.
- 42 (2) The general nature and character of the illness or disease

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1 claimed.

2 (3) The name and address of the employer by whom employed on
3 the last day of the last exposure, and if employed by any other
4 employer after such last exposure and before disablement, the
5 name and address of such other employer or employers.

6 (4) In case of death, the date and place of death.

7 (5) Amendments to applications making claim for compensation
8 which relate to the same disablement or disablement resulting in
9 death originally claimed upon may be allowed by the board in its
10 discretion, and, in the exercise of such discretion, it may, in
11 proper cases, order a trial de novo. Such amendment shall relate
12 back to the date of the filing of the original application so
13 amended.

14 (c) Upon the filing of such application, the board shall set the date
15 of hearing, which shall be as early as practicable, and shall notify the
16 parties, in the manner prescribed by the board, of the time and place of
17 hearing. The hearing of all claims for compensation on account of
18 occupational disease shall be held in the county in which the last
19 exposure occurred or in any adjoining county, except when the parties
20 consent to a hearing elsewhere. Claims assigned to an individual board
21 member that are considered to be of an emergency nature by that board
22 member, may be heard in any county within the board member's
23 jurisdiction.

24 (d) The board by any or all of its members **or by board**
25 **ombudsmen appointed under IC 22-3-1-1** shall hear the parties at
26 issue, their representatives, and witnesses, and shall determine the
27 dispute in a summary manner. The award shall be filed with the record
28 of proceedings, and a copy thereof shall immediately be sent by
29 registered mail to each of the parties in dispute.

30 (e) If an application for review is made to the board within thirty
31 (30) days from the date of the award made by less than all the
32 members, the full board, if the first hearing was not held before the full
33 board, shall review the evidence, or, if deemed advisable, hear the
34 parties at issue, their representatives, and witnesses as soon as
35 practicable, and shall make an award and file the same with the finding
36 of the facts on which it is based and send a copy thereof to each of the
37 parties in dispute, in like manner as specified in subsection (d).

38 (f) An award of the board by less than all of the members as
39 provided in this section, if not reviewed as provided in this section,
40 shall be final and conclusive. An award by the full board shall be
41 conclusive and binding unless either party to the dispute, within thirty
42 (30) days after receiving a copy of such award, appeals to the court of

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appeals under the same terms and conditions as govern appeals in ordinary civil actions. The court of appeals shall have jurisdiction to review all questions of law and of fact. The board, of its own motion, may certify questions of law to the court of appeals for its decision and determination. An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts. All such appeals and certified questions of law shall be submitted upon the date filed in the court of appeals, shall be advanced upon the docket of the court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs. An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%).

(g) Upon order of the worker's compensation board made after five (5) days notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the disablement occurred a certified copy of:

- (1) the memorandum of agreement, approved by the board; ~~or of~~
- (2) an order or decision of the board; ~~or of~~
- (3) an award of the full board unappealed from; ~~or of~~
- (4) an award of the full board affirmed upon an appeal;

whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment has been rendered in a suit duly heard and determined by the court. Any such judgment of such circuit or superior court, unappealed from or affirmed on appeal or modified in obedience to the mandate of the court of appeals, shall be modified to conform to any decision of the industrial board ending, diminishing, or increasing any weekly payment under the provisions of subsection ~~(j)~~ (k) upon the presentation to it of a certified copy of such decision.

(h) **An employer shall pay a judgment entered under subsection (g) not later than thirty (30) days after the date the judgment is final.**

(i) **An employer that fails to pay a judgment under this section by the time required by subsection (h) shall pay the employee for each day that the amount due the employee remains unpaid a penalty equal to ten percent (10%) of the amount awarded the employee in addition to the amount due. The maximum penalty payable under this subsection is twice the unpaid amount due the employee. The employee may recover the unpaid judgment and the**

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penalty described in this subsection in any court having jurisdiction of a suit to collect the unpaid judgment along with reasonable attorney's fees.

(j) In all proceedings before the worker's compensation board or in a court under the compensation provisions of this chapter, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court. **Prejudgment interest shall be awarded at a rate of ten percent (10%) per year, accruing from the date of filing of the application for adjustment of claim as determined under subsection (a).**

(k) The power and jurisdiction of the worker's compensation board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this chapter. When compensation which is payable in accordance with an award or settlement contract approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned. Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder. The board shall not make any ~~such~~ modification upon its own motion ~~nor shall or upon~~ any application ~~therefor be~~ filed by either party after the expiration of two (2) years from **the latest of the following:**

- (1) the last day for which compensation was paid ~~under the original award made either by agreement or upon hearing; except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid;~~ **for temporary total disability, permanent partial impairment, or permanent total disability.**
- (2) **The date of an award for temporary total disability, permanent partial impairment, or permanent total disability.**
- (3) **The last day that medical expenses under section 17 of this chapter were provided to the employee.**

The board may at any time correct any clerical error in any finding or award.

(l) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical

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1 examination of the employee and to testify in respect thereto. Such
 2 physician or surgeon shall be allowed traveling expenses and a
 3 reasonable fee, to be fixed by the board. The fees and expenses of such
 4 physician or surgeon shall be paid by the state only on special order of
 5 the board or a member thereof.

6 ~~(k)~~ **(m)** The board or any member thereof may, upon the application
 7 of either party or upon its own motion, appoint a disinterested and duly
 8 qualified industrial hygienist, industrial engineer, industrial physician,
 9 or chemist to make any necessary investigation of the occupation in
 10 which the employee alleges that ~~he~~ **the employee** was last exposed to
 11 the hazards of the occupational disease claimed upon, and testify with
 12 respect to the occupational disease health hazards found by such person
 13 or persons to exist in such occupation. Such person or persons shall be
 14 allowed traveling expenses and a reasonable fee, to be fixed by the
 15 board. The fees and expenses of such persons shall be paid by the state,
 16 only on special order of the board or a member thereof.

17 ~~(j)~~ **(n)** Whenever any claimant misconceives the claimant's remedy
 18 and files an application for adjustment of a claim under IC 22-3-2
 19 through IC 22-3-6 and it is subsequently discovered, at any time before
 20 the final disposition of such cause, that the claim for injury or death
 21 which was the basis for such application should properly have been
 22 made under the provisions of this chapter, then the application so filed
 23 under IC 22-3-2 through IC 22-3-6 may be amended in form or
 24 substance or both to assert a claim for such disability or death under the
 25 provisions of this chapter, and it shall be deemed to have been so filed
 26 as amended on the date of the original filing thereof, and such
 27 compensation may be awarded as is warranted by the whole evidence
 28 pursuant to the provisions of this chapter. When such amendment is
 29 submitted, further or additional evidence may be heard by the worker's
 30 compensation board when deemed necessary. Nothing in this section
 31 contained shall be construed to be or permit a waiver of any of the
 32 provisions of this chapter with reference to notice or time for filing a
 33 claim, but notice of filing of a claim, if given or done, shall be deemed
 34 to be a notice or filing of a claim under the provisions of this chapter
 35 if given or done within the time required in this chapter.

36 SECTION 28. IC 27-4-1-4, AS AMENDED BY P.L.178-2003,
 37 SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND
 38 AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED
 39 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 40 2004]: Sec. 4. The following are hereby defined as unfair methods of
 41 competition and unfair and deceptive acts and practices in the business
 42 of insurance:

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(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the policyholder's* insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of ~~his~~ *the person's* insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to

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1 be made, published, disseminated, circulated, delivered to any
 2 person, or placed before the public, any false statement of
 3 financial condition of an insurer with intent to deceive. Making
 4 any false entry in any book, report, or statement of any insurer
 5 with intent to deceive any agent or examiner lawfully appointed
 6 to examine into its condition or into any of its affairs, or any
 7 public official to which such insurer is required by law to report,
 8 or which has authority by law to examine into its condition or into
 9 any of its affairs, or, with like intent, willfully omitting to make a
 10 true entry of any material fact pertaining to the business of such
 11 insurer in any book, report, or statement of such insurer.

12 (6) Issuing or delivering or permitting agents, officers, or
 13 employees to issue or deliver, agency company stock or other
 14 capital stock, or benefit certificates or shares in any common law
 15 corporation, or securities or any special or advisory board
 16 contracts or other contracts of any kind promising returns and
 17 profits as an inducement to insurance.

18 (7) Making or permitting any of the following:

19 (A) Unfair discrimination between individuals of the same
 20 class and equal expectation of life in the rates or assessments
 21 charged for any contract of life insurance or of life annuity or
 22 in the dividends or other benefits payable thereon, or in any
 23 other of the terms and conditions of such contract; however, in
 24 determining the class, consideration may be given to the
 25 nature of the risk, plan of insurance, the actual or expected
 26 expense of conducting the business, or any other relevant
 27 factor.

28 (B) Unfair discrimination between individuals of the same
 29 class involving essentially the same hazards in the amount of
 30 premium, policy fees, assessments, or rates charged or made
 31 for any policy or contract of accident or health insurance or in
 32 the benefits payable thereunder, or in any of the terms or
 33 conditions of such contract, or in any other manner whatever;
 34 however, in determining the class, consideration may be given
 35 to the nature of the risk, the plan of insurance, the actual or
 36 expected expense of conducting the business, or any other
 37 relevant factor.

38 (C) Excessive or inadequate charges for premiums, policy
 39 fees, assessments, or rates, or making or permitting any unfair
 40 discrimination between persons of the same class involving
 41 essentially the same hazards, in the amount of premiums,
 42 policy fees, assessments, or rates charged or made for:

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- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

- (A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or

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abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or ~~agent~~ *insurance producer* thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed ~~agent~~ *insurance producer* thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, ~~agent, an insurance producer~~, or a solicitor duly licensed under the laws of this state, but such broker, ~~agent, insurance producer~~, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance ~~agent~~ *producer* or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of ~~his or~~ *his* the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of ~~agents~~ *insurance producers* or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as

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combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, ~~agent~~, *insurance producer*, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of ~~his, her, or it's~~ the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common

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carrier immediately before or after the flight;
 (iii) insures against baggage loss during the flight to which
 the ticket relates; or
 (iv) insures against a flight cancellation to which the ticket
 relates.

(14) Refusing, because of the for-profit status of a hospital or
 medical facility, to make payments otherwise required to be made
 under a contract or policy of insurance for charges incurred by an
 insured in such a for-profit hospital or other for-profit medical
 facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue
 insurance to an individual, limiting the amount, extent, or kind of
 coverage available to an individual, or charging an individual a
 different rate for the same coverage, solely because of that
 individual's blindness or partial blindness, except where the
 refusal, limitation, or rate differential is based on sound actuarial
 principles or is related to actual or reasonably anticipated
 experience.

(16) Committing or performing, with such frequency as to
 indicate a general practice, unfair claim settlement practices (as
 defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an
 individual's coverage under an individual or group health
 insurance policy solely because of the individual's medical or
 physical condition.

(18) Using a policy form or rider that would permit a cancellation
 of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
 vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring
 to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan
 coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of
 insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
 the resolution of an appealed grievance decision.

~~(25)~~ (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or
 IC 27-8-5-19.2.

~~(25)~~ (27) Violating IC 27-2-21 concerning use of credit

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information.

(28) Violating IC 22-3-4-15 concerning second injury fund assessments.

SECTION 29. IC 33-13-8-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.1. "Judge", as defined in section 2 of this chapter, includes:

(1) a person who has served or is serving as a regular judge of the Indiana tax court; **or**

(2) a person who is appointed after June 30, 2004, and serves as a member of the worker's compensation board established by IC 22-3-1-1.

SECTION 30. [EFFECTIVE JULY 1, 2004] (a) As used in this SECTION, "committee" refers to the worker's compensation board performance evaluation committee established by IC 22-3-1-4, as added by this act.

(b) The governor shall make the initial appointments to the committee not later than July 1, 2004. In making an initial appointments, the governor shall indicate the length of the term for which the individual is appointed.

(c) The initial terms of office for the five (5) individuals appointed to the committee by the governor are as follows:

(1) Two (2) members for a term of four (4) years.

(2) One (1) member for a term of three (3) years.

(3) One (1) member for a term of two (2) years.

(4) One (1) member for a term of one (1) year.

(d) The initial terms begin July 1, 2004.

(e) This SECTION expires July 1, 2008.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1309, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1309 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 6.

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